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THE SEAT OF JUDGE THOMAS JONES

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# HISTORY OF NEW YORK

DURING

## THE REVOLUTIONARY WAR,

AND OF

THE LEADING EVENTS IN THE OTHER COLONIES  
AT THAT PERIOD,

BY

THOMAS JONES,

JUSTICE OF THE SUPREME COURT OF THE PROVINCE.

EDITED BY

EDWARD FLOYD DE LANCEY.

WITH NOTES, CONTEMPORARY DOCUMENTS, MAPS, AND PORTRAITS.

VOLUME II.

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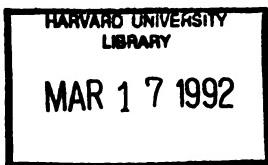
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"THE JOHN D. JONES FUND SERIES" has been so named by the New York Historical Society in honor of their enlightened and generous fellow-member, John Divine Jones, whose great interest in the history of his native State has led him to endow the Society with a fund of six thousand dollars for publishing works of an historical nature which may not fall within the scope of its ordinary "Publication Fund."

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## ILLUSTRATIONS.

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- ✓ 1. FORT NECK HOUSE, QUEENS COUNTY, LONG ISLAND,  
THE AUTHOR'S SEAT, . . . . . Facing Title-page.
- ✓ 2. INTERIOR OF THE GREAT HALL OF FORT NECK HOUSE, " page 277
- ✓ 3. FIRST MAP OF THE UNITED STATES AS ACKNOWLEDGED  
BY THE PEACE OF 1783, . . . . . " page 313
- ✓ 4. MAP OF THE DE LANCEY BOWERY FARM, IN THE CITY  
OF NEW YORK, AS IT WAS AT THE TIME OF THE  
REVOLUTION, . . . . . " page 559

## EXPLANATION OF THE ILLUSTRATIONS.

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THE Author's seat, Fort Neck House, Queens County, the view of which faces the title page, was built in 1770. It was erected for him by his father, Judge David Jones. It faces the great South Bay, and has a frontage of ninety feet. It is solidly built of hewn timbers, upon a foundation of Rhode Island freestone, and is finished on the outside with long cedar shingles, painted, renewed but once since first erected. The great entrance hall, of which an interior view is also given, is thirty-six feet long by twenty-three wide, floored with heavy polished southern pine. Over the door leading from it to the staircase and to the dining-room are still a pair of enormous elk horns, presented to the Author by his warm friend Sir William Johnson, Baronet, who shot the animal on his own domain, on the Mohawk. The stairs of this house are a puzzle to modern architects, as they are open underneath from bottom to top, and have no support except from the wall to which they are attached, and yet have never yielded a particle in the lapse of more than a century of continued use.

The first map of the United States, according to the Peace of 1783, is a reproduction of a copy which was brought from Europe after the Peace, by Chief Justice John Jay. The editor's maternal grandfather, the late Peter Jay Munro, of New York, a nephew of John Jay, accompanied his uncle to Spain and to France, was with him at the time of the Negotiation of the Peace, and returned with him to New York, a youth in his eighteenth year, in July, 1784. The Chief Justice brought out some copies of this map of the new nation, and from one of them, which descended to the editor from his grandfather, this reproduction has been made. It will be seen from its date, that it was published five months before the definitive treaty was signed, which was on September 3d, 1783, and over ten before the 14th of January, 1784, when it was ratified by Congress.

The Map of the de Lancey Farm, between the Bowery and the East River, in the City of New York, is a copy two-thirds the size of the original manuscript map in the editor's possession. It is a matter of local interest, as denoting how much was built up at the time of the Revolution, and in connection with the official document in the note to which it is annexed shows many of the occupants of that part of the city at that time, as well as the subsequent purchasers from the Commissioners of Forfeitures. It belonged to James de Lancey, the then owner of the estate (the eldest son of Lieutenant-Governor James de Lancey), a great-uncle of the editor, in whose possession the original map now is.

TABLE OF CONTENTS  
or  
THE SECOND VOLUME.

---

CHAPTER I.

AFFAIRS IN NEW YORK IN 1780.

Proclamation by General Robertson on assuming the Government in 1780—Civil law to be restored and the Courts opened—Joy of the people—Instead of so doing, he creates by proclamation, military “Courts of Police” on Long Island, in the City, and on Staten Island—Appoints their Judges, called “Superintendents,” and other officials—Empowers them to try causes of all kinds, personal, real, criminal, and mixed, without a jury, upon “principles of equity and justice,” without any appeal—Plan of the King’s officers, Smith and Elliot, to recall the Rev. Dr. Rodgers from the Americans and open the New Brick Presbyterian Meeting-House, then a hospital—Gen. Robertson, the Governor, promises his aid—They apply to Sir Henry Clinton for permission—Dr. Booth, Superintendent of Hospitals, protests against it, unless another building equally suited for a hospital be provided—Character and conduct of Dr. Rodgers—Gov. Tryon having vigorously quelled the insurrection of the Regulators against lawyers in North Carolina, they all take the oath of allegiance—These people all Scotch Presbyterians—They refuse to break their oaths and take arms against the King at the request of Congress—Dr. Rodgers and Dr. Caldwell, Presbyterian clergymen, sent by Congress to change their decision—The extraordinary methods they adopted, and their success—Judge Ludlow, the senior Judge of the Supreme Court, angry at the appointment of

William Smith over his head as Chief Justice—Made Master of the Rolls, and also Superintendent of the Long Island Court of Police as a compensation—Other lucrative powers vested in him as Superintendent of Police—The profits divided between Robertson, Elliot, and Ludlow—Ludlow attainted, and after the war made Chief Justice of New Brunswick—Order of Governor Robertson to seize “rebel estates” within the British lines—Philip John Livingston appointed Manager of “rebel estates,” at £200 sterling a year with one of the estates at Hellgate rent free—Orders the Sheriffs to send him lists of such estates in all the counties within the lines—Causes of the creation of the Courts of Police, and the office of Livingston, never made public—Known only to the British officials and commanders—Of the nine Judges of these four military Courts of Police, only two know anything of law—What would have been the effect of restoring the civil government and the regular Courts—All powers of government, ministerial, judicial, and executive, vested in these illegal and arbitrary Courts—Ludlow’s extraordinary declaration regarding their establishment.....I-25

[See Editor’s Notes, I., II., III., IV., V.]

## CHAPTER II.

### AFFAIRS ON LONG ISLAND IN 1780.

Robertson’s Proclamation ordering wood cut and hay furnished utterly disregarded—The policies of crushing the rebellion by proclamation and by force contrasted—Had Cromwell’s precedent at Drogheda been adopted at Fort Washington in 1776, it would have ended the matter—Lt.-Col. John Antill tried and dismissed from the Army for embezzling the stores of the Crown—Restored in four months—Governor Robertson congratulates Antill’s brother-in-law on this restoration—Despotic and arbitrary acts of the Courts of Police—Two Whigs of Oyster Bay, named Young, make counterfeit Continental money in 1776, to pay their debts to Loyalists—The Huntington Committee arrest them by order of the Provincial Con-

vention—Imprisoned in New York till Howe landed on Long Island in August—Then sent to Lichfield jail, whence they escape and return to Long Island—They sue the Huntington Committee and two members of the Convention, who had all renewed their allegiance, for damages in the New York Court of Police—Get judgment, and collect their demand on execution against the Committeemen—Clinton permits Rhode Island Refugees to erect a fort at St. George's Manor—Complaints of their depredations to the British officials proving useless, the inhabitants send to Major Talmadge, of Connecticut, for relief—Talmadge crosses the Sound, surprises the fort, and takes them all prisoners, except a few who were absent..... 26-34

[See Editor's Note, VI.]

### CHAPTER III.

#### SEIZURE AND DISPOSITION OF "REBEL ESTATES" WITHIN THE LINES BY PHILIP JOHN LIVINGSTON, THEIR BRITISH "MANAGER," THROUGH THE "COURTS OF POLICE."

Great Power of the Courts of Police and of the Manager of "rebel estates"—Instances of their tyranny—Rodman's estate seized because one of the family of three was not loyal—Case of Joseph Baldwin—of Daniel Pine's estate—of Thomas Jackson—of the infant grandchildren of Henry Holland—Samuel Jones and Thomas Jones, mortgagees in possession of lands, before the Courts of Police were established, turned out of their lands by Ludlow's remarkable decision, that on the British army taking possession of Long Island, the King *ipso facto* became seized of all "rebel estates"—Discussion of the subject—John Willett's case—Old Robert G. Livingston's lands on Long Island and in New York seized because he lived in Dutchess County, in spite of the efforts of his son, a captain in the British service, to get possession in his father's name—James Jauncey and Moses Franks, mortgagees of Eaton's or Lloyd's Neck, refused possession of the land or preservation of the timber, because the mortgagors, John Sloss Hobart and George Grenal, had joined the Americans—

|  |       |
|--|-------|
| The Corporation of the City of New York defrauded and robbed by the Courts of Police and the British officials and Generals, and its revenues bestowed on favorites—Some charters of corporations decided to be void by the Prohibitory Act, and others not, and others in part—How the creditors of the City suffered losses—Cases of John Shoals, Miss Middleton, Benjamin Helme, Cornelia Ball, Andrew Gautier, and John Thurman—Infamous treatment and imprisonment of the latter..... | 35-65 |
|--|-------|

[See Editor's Notes, VII., VIII., IX., X., XI., XII.]

#### CHAPTER IV.

*O/|* SUMPTUOUS PROVISION FOR BRITISH GENERALS AND OFFICIALS IN NEW YORK DURING THE WAR.

Construction of the clause, "except such as should be wanted for the particular service and use of his Majesty's Army," in the order appropriating "rebel estates" to accommodate loyal refugees, for the emolument of British officers—Sir Henry Clinton's town house, country-seat, and five farms—Commissary Wier's town house and country-seat—Governor Robertson, a Lieutenant-General, a manager of City funds, and a partner in the firm of McAdam, Rhinelander & Co., given a country-seat and town house—General Birch has Samuel Verplank's house, a country-seat on New York Island and another at Jamaica—How he subsequently got Samuel Pintard's house at Hempstead—Account of Pintard—His residence at New Rochelle—Great loyalty of the Huguenot people of that place—His house and farm robbed by British troops, while he was acting with the British army as a volunteer—Could get no redress—Buys a snug place at Hempstead—Depredations of British troops cause him to send his furniture to the Rev. Mr. Cutting's, and to go with his family to Madeira—How Birch obtained the house, and then the furniture—Birch in 1779 pulls down and carries off a Quaker meeting-house, and a farm-house of Judge Jones—Puts the windows of the last in a barn and makes a barrack—The same year pulls down and

|   |       |
|---|-------|
| carries off the meeting-house of the loyal Presbyterians at Foster's Meadow—How Birch made £2,000 by cutting off the ears of the sheep on Hempstead Plains in 1783—The houses and seats allowed to Brig.-Gen. Skinner—Col. Ludlow, Lt.-Col. Stephen de Lancey, Philip John Livingston, and Charles McEvers—How Loyalist estates were also seized for the emolument of British officials—The instance of Mr. Gouverneur's house and Mrs. Kearney's loss..... | 66-80 |
|---|-------|

## CHAPTER V.

**ILLEGAL AND CRUEL TREATMENT OF LOYALISTS BY THE BRITISH MILITARY DURING THE WAR.**

Mr. Hulens, of New Jersey, imprisoned for damning a town major—James and Oliver de Lancey, of Westfarms, tried and sentenced to two months' imprisonment for a quarrel with Colonel Emmerick—A John Street freeholder flogged with 300 lashes for striking a subaltern in a dispute—Clinton's approval of the sentence—How Micah Williams was treated for kicking a negro whom he caught committing a trespass—How Hicks, the tenant of Capt. John P. de Lancey's house in Broadway above Trinity Church, kept as a hotel, was turned out of possession without Capt. de Lancey's leave, by General Patterson, at the request of Commissary Loring, and Roubalot, one of his dependents, put in—Ezekiel Robins imprisoned for keeping bad company—Fifty horses put into Isaac Lefferts's orchard while the apples were in heaps for making cider—Wanton outrages on Polhemus and Okely—Judge Jones's horses and wagons and servants forced by a quartermaster of dragoons to drive sutlers' stores 100 miles to Southampton and stay there three weeks at their own expense—Robbery of Leggett's hogs—How Clinton's escort to Southampton in 1779 plundered the farms on the way—Robbery and murder of Parmenas Jackson at Jerusalem in 1781—The outrage and trouble inflicted on Colonel Richard Floyd through the false charge of Charity French, a New England refugee..81-97

## CHAPTER VI.

**WHY THE LAWS OF THE COLONY WERE ABOLISHED AND THE COURTS OF JUSTICE SHUT UP DURING THE WAR.**

Allegation of the British officials in New York that the Act of Parliament termed "The Prohibitory Act," when it took effect, 1st January, 1776, deprived the Colonists of the liberties of Englishmen and the protection of the King, and subjected their property to confiscation—The language of the Act—Its provisions—Its object to prohibit trade—Full and thorough discussion of the Act—Its true meaning—No words in it abolishing Courts or putting the Colonists out of the King's protection and confiscating their property—This forced construction contrived and propagated by Congress to gain consent to the Declaration of Independence—Joseph Galloway most prominent in setting up and supporting this construction—He abandons Congress and joins Howe at New York—Sketch of Galloway—He plans Howe's Southern Expedition to Philadelphia—He communicates this construction of the Prohibitory Act to Generals Howe, Robertson, and the other British officials—The idea never thought of, or suggested before, by, or to, any of them—They adopt it with avidity—From this construction came all the injustice, plunder, extortion, and wicked acts of the British Generals, Governors, Commissaries, and Courts of Police—The civil law in operation, and all Courts open, and all public business done in the Province of New York, though the Act took effect 1st January, 1776, until put an end to and closed by the Declaration of Independence the next July—Instances of business done—The Court of Oyer and Terminer held at White Plains, in April, 1776—Among other business, a criminal tried for murder, convicted, and hung—Long Island wholly submits after the battle of Brookland—The Committees surrender, and renew their oaths of allegiance—All New York south of the Highlands, except the north part of Westchester County, submits after Howe takes possession of the City of New York—Kings, Queens, and Suffolk, the richest Counties

|   |        |
|---|--------|
| in the Province, pay two-thirds of the taxes, and have a population of 60,000—The brothers Howe, the British General and Admiral, taking no steps to restore civil government and open the Courts, the inhabitants of New York and vicinity petition them to do so—The petition presented by the first people within the lines—They refuse to give an answer—Their private opinion and sentiments on the Prohibitory Act—The reasons the Supreme Court Judges themselves could not open the Supreme Court—The Queens County Common Pleas opened and kept open till the death of the Judges in 1779..... | 98—119 |
|---|--------|

[See Editor's Notes, XIII., XIV., XV., XVI.]

## CHAPTER VII.

### THE "COURTS OF POLICE," MILITARY COURTS WITH QUASI-CIVIL JURISDICTION CREATED BY PROCLAMATIONS OF BRITISH COMMANDERS FOR RULING NEW YORK.

The first "Court of Police" established by Sir William Howe—Its "Superintendent" or Judge, Andrew Elliott—His Assistant, David Matthews, the Mayor—Their characters—Nature of these Courts of Police—Enormous uncontrolled powers within their limits—Accountable to no authority—No appeals from their decisions—Their creation a manifest violation of the Laws and Constitution of England—Have cognizance of complaints or causes of action arising prior to 1st May, 1777—They exercise no power or jurisdiction over the military, or acts by them committed—The "rebellion" supposed to be at death's door when Howe created the first one—The special commission created by Sir Guy Carleton in 1783, to enable departing Loyalists to collect debts due them—The construction of the Prohibitory Act adopted and claimed by the British officials in New York a pretext to serve their own purposes—Proofs—The City Charter and Ordinances, part suspended and part not—Hill, a Bostonian, made Superintendent of street paving—His lucrative office—How he made money—Said to have paid well for the office—The powers of the Recorder and Aldermen taken away—Those of the Mayor left intact—

|  |         |
|--|---------|
| The Ministry or Civil Vestry Act for the maintenance of the poor, and the Loan Act part in force and part not in New York, the latter in force in Queens County—The Justices of the Peace and their powers, how affected—Civil law not abolished by the rebellions of 1715 and 1745 in Scotland, nor in the Great Rebellion in England—Was New York “a Garrison Town”—Full discussion of the question—The military claim that it was, shown to be illegal—General Mostyn's case a governing decision on the question of a Garrison Town..... | 120-142 |
|--|---------|

[See Editor's Notes, XVII., XVIII.]

## CHAPTER VIII.

### THE “CITY FUNDS” DURING THE WAR.

|   |         |
|---|---------|
| The “City Funds”—What they were—How raised—Their amount—Their reputed appropriation—The power to seize, use and rent “rebel estates” discussed—Shown to be utterly illegal—The rents of them paid into the “City Funds” by Robertson's orders—Private lotteries to aid refugees formed by permission of the Commandants in the teeth of the law—The money raised put in the “City Funds”—An excise tax ordered laid by Robertson, and the money put in the “City Funds”—Arbitrary, illegal action of the Long Island Court of Police regarding the salt marshes of Oyster Bay and Hempstead—Other illegal acts of the same kind—Gross annual amount of these City Funds £30,000—How it was disgracefully squandered—What benefits would have resulted from restoring Civil Government and reestablishing the Custom House—The money saved would have been annually upwards of £8,700 sterling—Tables of the names and salaries of all the officials of the four “Courts of Police,” and of the “Superintendent's Office of Exports and Imports at New York”—Statement of the cost of the Courts of the Province and of the Custom House, had they been restored—The three Courts of Police established by Governor Robertson in 1780—The inconvenience and hardship of attending them, and their arbitrary and cruel treatment of the people..... | 143-176 |
|---|---------|

[See Editor's Notes, XIX., XX.]

## CHAPTER IX.

## MILITARY OPERATIONS AND EVENTS IN 1781.

Arnold's Virginia expedition—His personal plunder—Indecisive naval engagement of De Ternay and Arbuthnot—General Phillips reinforces Arnold in Virginia—La Fayette's corps sent to Virginia by Washington—Mutiny of the Pennsylvania troops in Washington's Army—Clinton's absurd and stupid course with the mutineers—Loyal and spirited conduct of the militia and inhabitants of the City of New York in 1780—Clinton's frivolous and ridiculous reasons for keeping his army on Staten Island—His stupidity and enmity to Lord Cornwallis largely the cause of the loss of America—Total defeat of Tarleton by Morgan in South Carolina—General Greene succeeds Gates in the command of the American Army—Defeated by Lord Cornwallis at Guilford Court House—The latter marches to Wilmington, North Carolina—Greene's indecisive battle with Lord Rawdon near Camden—The people of Carolina, angered by the plundering of British troops, join Greene in great numbers—He besieges Fort Ninety-Six—Successful and brilliant defence by Col. John Harris Cruger with de Lancey's First New York Provincials—Greene raises the siege—The garrison evacuate the fort, retire towards Charleston and are reinforced on the way—Greene follows—Battle of Eutaw—Both sides claim it but neither keeps the field—End of the Carolina campaign—Success of Arnold and Phillips in Virginia—Cornwallis arrives from Wilmington and assumes the command—Takes possession of Williamsburg—Engagement there with the Americans—They are defeated by Col. Simcoe—Generals Wayne and Baron de Steuben join La Fayette—Cornwallis moves to the Chesapeake and fortifies Yorktown, by order of Sir Henry Clinton—Naval Battle of De Grasse and Graves—Indecisive in its results—The English return to New York, the French keep the seas—Junction of Washington and Rochambeau with the American army—Siege of Yorktown—Surrender and capi-

|   |         |
|---|---------|
| tulation of Cornwallis and his whole army—Sir Henry Clinton, with the British fleet and army, arrive in the Chesapeake three days too late and return to New York—The Abbé de Robine's statement of the operations in Virginia—Washington's letter to De Grasse—A failure at Yorktown would have caused the disbandment of the allied army..... | 176-201 |
|---|---------|

[See Editor's Notes XXI., XXII.]

## CHAPTER X.

### EVENTS AND OPERATIONS IN AND ABOUT NEW YORK IN 1781.

Junction of Washington and Rochambeau in Westchester, in July, 1781—Clinton in New York with a large army and heavy naval force—He is three times informed of the proposed junction of the French and American Armies—Makes no attempt to prevent it, except to go with some troops to Kingsbridge, where he dines with Mr. Van Cortlandt—The views of the Abbé de Robine, a chaplain in Rochambeau's Army—The united forces number 6,000 men, Clinton's forces, all told, about 26,000 men—The Franco-American Army lie near Whiteplains three weeks—They cross the Hudson at the Highlands and enter Jersey undisturbed—Clinton notified of a dinner of all the chief officers at Newark, so that he could surprise and capture them—Takes no notice of it—William Smith his adviser—Arnold's proposal to Clinton to prevent the junction of Washington and Rochambeau at Whiteplains, first approved, then refused—Arnold's intense indignation—The Expedition to New London, under his command, in September, 1781, ordered to pacify him—The town plundered and burnt, though half of its inhabitants were loyal—Arnold, with his plunder, returns satisfied—The whole a plan of William Smith—Letter eulogizing Smith for the plan and its execution—The Loyalists of New England and upper New York propose a Committee of Correspondence on condition that no one of the Smith family should be acquainted with its business, especially Joshua Hett Smith—The proposition accepted—Clinton appoints the Committee—Appoints Joshua Hett

Smith chairman—The plan thereby killed—The British Adjutant General and his Deputy state in the author's presence that an intercepted letter of Joshua Hett Smith to Governor George Clinton, with full information and details of the British Army, was brought to their office—Its delivery to Sir Henry Clinton—He does nothing, but still entertains its writer—Copies of the British Army returns regularly furnished to Washington for two years, within 24 or 48 hours of their delivery to the British Commander—Proposals to return to their allegiance to the Crown sent by the Vermonters in December, 1781, to Clinton—He lays all the papers before William Smith—Smith advises the papers sent to England to be laid before the King and Council on the ground of want of power in Clinton to act—Smith sends copies of the papers and of his own opinion to Governor George Clinton at Poughkeepsie—Governor Clinton calls a special meeting of the Legislature to consider them—Governor Clinton, the friend and former pupil of Smith—Smith, his brothers, his wife's relatives, William, Robert, and Peter R. Livingston, and James Duane, and his friends John Morin Scott, and Richard Morris, largely interested in Vermont Lands—Had the new Government of the Vermonters under the Crown been formed as proposed, these lands would have been lost—The case of Col. Isaac Hayne—Renews his oaths of allegiance in Carolina—Is afterwards taken in arms against the King and subsequently tried by Court-Martial by order of Lord Rawdon, and hung—Lord Rawdon and the Duke of Richmond—The former challenges the latter—Retraction and apology of the Duke—The correspondence on the occasion..... 202-220

[See Editor's Notes, XXIII., XXIV., XXV.]

## CHAPTER XI.

### EVENTS AND OCCURRENCES IN 1782.

Adoption of General Conway's motion by the House of Commons, in February, 1782—Fall of North's Government and formation of an Opposition Ministry—Fox, Burke, and Lord

Shelburne included therein—Their first act the liberation of Laurens, Seaton and Gouverneur from the Tower of London—Clinton superseded as Commander-in-chief in America, by Sir Guy Carleton—Carleton forbidden to act on the offensive—Received with great joy at New York in April—Clinton departs “laughed at by the rebels, despised by the British, and cursed by the Loyalists”—Carleton discharges Sir James Jay and Henry B. Livingston from the Prevost—Notice of the latter—Sketch, character and career of the former—An unpopular New York physician—He determines to go to England about 1760—Is asked by the Governors of Kings College to raise funds for the college in England—Accepts and obtains large sums—The Governors send a congratulatory address to the King upon the peace of 1763—It is presented by Dr. Jay to George III., who knights him on the occasion—Sir James declining to accept their bills for the funds collected, is sued in Chancery by the Governors of the College—Is compelled to return to New York and account—A settlement finally effected—Goes back to England—Adopts and advocates the American side on the breaking out of the war—Returns during the war and gets chosen by the Assembly a Senator for New York—Prevails on John Morin Scott to bring in a bill of Attainder and Confiscation—It is warmly discussed and defeated—Subsequently reintroduced, and is violently opposed, but passes—All the Governors by name who had sued Sir James included—Sir Guy Carleton’s hostilities against the great corruption in the British army—Saves £2,000,000 sterling in one year—The execution of Huddy by the Associated Loyalists—Washington’s prompt demand of his executioner—Timid and vacillating conduct of Clinton—Firm and generous conduct of Carleton, who orders an investigation—William Franklin, President of the Board, goes to England—Washington orders the British captains, paroled at Yorktown, to select one of themselves by lot to be executed in retaliation for Huddy—They refuse—Orders his own officers to cast the lot—Capt. Asgill drawn—Sent to New Jersey—His alleged cruel treatment by Washington—Correspondence of Washington and Carleton—The French Government, at the re-

quest of Asgill's mother, ask Congress for his release—  
 Congress assent—Asgill released by Washington—Charleston ordered evacuated without any protection for the native Loyalists—Numbers fly to Florida, the West Indies, the Bermudas, and Nova Scotia—Terrible scenes at the evacuation described—Cruel treatment and plunder of those who had to remain—The description received by the author from an eye-witness.....221-236

[See Editor's Notes, XXVI., XXVII., XXVIII., XXIX., XXX.]

## CHAPTER XII.

### THE TREATY OF PEACE, ITS NEGOTIATION AND PROVISIONS.

The Negotiators on each side—Their characteristics—Commission of Oswald, the English negotiator, objected to—He asks John Jay to draw one that will suit—Jay does so—It is sent to England and signed—Under this commission Oswald negotiates the treaty—Inferior social rank of Oswald, and Whitefoord his Secretary—The negotiation kept on foot to serve the stock-jobbing purposes of "Malagrida" (Lord Shelburne, the British Premier)—The preliminary articles agreed to November 30, 1782—They are signed and exchanged as a Treaty of Peace on January 20, 1783—Stated in the preamble to be formed on principles of equity and reciprocity—Discussion of the Treaty, article by article—The enormous extent of country ceded by the second article—Comparison of its size with European countries—The Third and Fourth articles—The Fifth article providing "that Congress should earnestly recommend to the Legislatures of the several States to provide for the restitution of all estates, rights, and properties which had been confiscated, and the Sixth prohibiting future confiscations—A great deception upon Oswald and the British Government—How the States violated the recommendation of Congress and legislated directly against the Loyalists in the teeth of these articles and the treaty—The methods and objects of such legislation—The various acts passed by New York to nullify the treaty, and how they rendered it nugatory—The provisions of several of them—Introduced and passed after

the terms of the treaty were known—The Seventh article—Carleton proposes to Congress to arrange a valuation to be paid for the negroes within the British lines, who had been promised their freedom by the proclamations of the British Governors and Generals, instead of giving them up to their former owners as provided by the treaty—The proposal accepted and the valuation made—The money not paid by the British Government in consequence of the absolute refusal of the Americans to comply with the articles of the treaty in favor of the Loyalists.....237-258

[See Editor's Notes, XXXII., XXXIII., XXXIV., XXXV.]

### CHAPTER XIII.

#### EFFECT AND CONSEQUENCES OF THE PROPOSED EVACUATION OF NEW YORK.

The articles of peace arrive at New York in March, 1783—Not adopted by Congress till the succeeding May—Immense emigration of Loyalists from New York prior to the final evacuation on 25th of November, 1783—Admirable, firm, and kind action of Sir Guy Carleton—The gentlemen mentioned in the Act of Attainder request Carleton to compel payment of the debts already due them, before the evacuation, as afterwards they cannot recover in consequence of that Act—He institutes an inefficient commission, a sort of Court, which did no good—The Loyalists lose their money—The Commissioners draw good pay—Carleton imposed upon in this matter by a bad adviser.....259-268

[See Editor's Notes, XXXVI., XXXVII.]

### CHAPTER XIV.

#### THE NEW YORK ACT OF ATTAINDER.

The Act passes October 22, 1779—The names of the Parties included therein—Three of them ladies, Mrs. Beverly Robinson, Mrs. Charles Inglis, and Mrs. Roger Morris—Their

lives forfeited and their estates confiscated *ipso facto* by the Act, without a notice, without a citation, and without a trial—The crime, “an Adherence to the enemies of the State”—The different cases of different gentlemen—The Act partial as well as cruel—Instances—Seven of them, including the author, actually on parole when the Act passed—On the suppression of the Scotch rebellions in 1715 and 1745, citations were published requiring delinquents to appear at a long day and submit to Government, or show cause why they should not be included in Acts of Attainder—Women not included—Instances of Mrs. MacIntosh and Lady Kilmarnock—Benedict Arnold and others notified in the same way under the Pennsylvania Act of 2d of October, 1780—Bolingbroke's case in the reign of George I.—Full statement of the case of Thomas Jones, his capture, his being plundered, and his captivity—Declared a “British prisoner of War” by Connecticut, and “a Subject of the United States” by New York—The New York Act founded on private revenge and political resentment—No citations called for by it—Many gentlemen attainted for having large real estates in the Province of New York—Several long before the Declaration of Independence actually in England, and living there when the Act passed—The Attainted persons all Episcopilians—The Attaintors chiefly Presbyterians and other opponents of the Episcopilians—Alleged reason for putting the name of James de Lancey in the Act—Judge Jones included in the Act for performing an official duty on the Bench in April, 1775—John Watts's case—Lord Dunmore, Sir Henry Clinton, and Governor Tryon included, but Governor Robertson left out—All four land-owners in New York ..... 269-284

[See Editor's Notes, XXXVIII., XXXIX., XL.]

## CHAPTER XV.

### THE ACT OF ATTAINDER FURTHER CONSIDERED.

Cases of nineteen of the Attainted Gentlemen who were born in England—“Real British Subjects” under the treaty—Why the Rev. Dr. Inglis and his wife were attainted—Why An-

drew Elliott and Lambert Moore were not attainted, and David Matthews and Peter Dubois were attainted, all being officers of the same "Court of Police"—Richard Floyd included, and his brother Benjamin not—Other instances of similar action—Further discussion of the Act—Many of the gentlemen included in the Act prominent in the de Lancey party before the War—The majority of the Legislature which passed, prominent in the Livingston party before the War—One great object of the Act to destroy the de Lancey party—The *ex post facto* feature of the Act—The allegation of a breach of parole by some of the gentlemen named in the Act shown to be a pretext—Proof that Governor Trumbull's letters of recall to those paroled were never delivered—The fact admitted by Governor Trumbull himself in the presence of Colonel Hamlin—The "Case" of Thomas Jones delivered to Lord Shelburne, to be transmitted to Mr. Oswald during the negotiation of the Peace, containing the documents showing his arrests and imprisonments—Instances of eighteen gentlemen, originally Whigs, who received pardons and remained within the lines during the war, who were not attainted.....285-306

[See Editor's Notes, XLI., XLII., XLIII.]

## CHAPTER XVI.

### RESPONSIBILITY OF THE TWO SIDES FOR ACTS OF WAR IN THE REVOLUTION.

Statement of the acts of war on each side in the American War—Burning of towns during wars a usual practice in civilized nations—Instance of the Acadians—Their towns and villages burnt by the New Englanders—Accounts of their happy condition—Their expatriation—St. Malo, Cherbourg, and Havre, nearly destroyed by the British—General Wolfe burnt 15 villages on the St. Lawrence, in 1759—The same thing done by Murray and Amherst—The Abbé de Robine on the Acadians.....307-314

[See Editor's Note XLIV.]

## CHAPTER XVII.

## GENERAL SCHUYLER.

- Sketch of Schuyler..... 315-319  
[See Editor's Note XLV.]

## CHAPTER XVIII.

## LORD STIRLING.

- Sketch of William Alexander, Major-General Lord Stirling. ..320-324  
[See Editor's Notes, XLVI., XLVII.]

## CHAPTER XIX.

## GEORGE CLINTON.

- Sketch of Governor George Clinton..... 325-330  
[See Editor's Note, XLVIII.]

## CHAPTER XX.

## GENERALS WOODHULL AND SULLIVAN, AND COLONEL JAMES HOLMES.

- Sketch of General Nathaniel Woodhull—Sketch of General Sullivan—Notice of Colonel James Holmes..... 331-336  
[See Editor's Notes, XLIX., L., LI.]

## CHAPTER XXI.

## COLONEL JOHN BUTLER, ISAAC SEARS, AND GENERAL LAMB.

- Sketches of Colonel John Butler and his family—Isaac Sears, his character and career—General John Lamb and his origin, character, and career..... 337-343  
[See Editor's Note, LII.]

## CHAPTER XXII.

## WASHINGTON.

|                            |         |
|----------------------------|---------|
| Sketch of Washington.....  | 344-349 |
| [See Editor's Note, LIII.] |         |

## CHAPTER XXIII.

## GENERAL CHARLES LEE, DONALD CAMPBELL.

|   |         |
|---|---------|
| Sketch and character of Major-General Charles Lee—Donald Campbell—His father, Lachlan Campbell of Islay—His attempt to colonize Highlanders about Lake George—Settles in Ulster County—Donald's extraordinary career in Europe and America..... | 350-356 |
|---|---------|

## CHAPTER XXIV.

## FRANCIS LEWIS.

|   |         |
|---|---------|
| Sketch of the life and career of Francis Lewis..... | 357-361 |
| [See Editor's Note, LIV.]                           |         |

## CHAPTER XXV.

## SIR WILLIAM JOHNSON, BARONET.

|   |         |
|---|---------|
| Sketch of Sir William Johnson—Brought to America by his uncle Sir Peter Warren to settle his lands on the Mohawk—His wonderful influence with the Indians—His military services—Defeats Dieskau at Lake George—Created a Baronet—Further Military Services—His settlement in the Mohawk Valley—Builds Mount Johnson, Johnson Hall, and Johnstown—His great hospitality and domestic life—Superintendent of Indian affairs—His sudden death—His marriage and three children—His Indian mistress, Molly Brant.. | 362-375 |
| [See Editor's Note, LV.]  |         |

**TABLE OF CONTENTS.**

**xxvii**

**CHAPTER XXVI.**

**COLONEL JOHN HARRIS CRUGER AND MRS. CRUGER.**

|   |         |
|---|---------|
| Life and military services of Col. John Harris Cruger—The courage and resolution of Mrs. Cruger—The dangers she went through..... | 384-385 |
|---|---------|



## TABLE OF EDITOR'S NOTES

TO

### THE SECOND VOLUME.

[*The figures in parentheses denote the pages of the text to which the notes refer.*]

#### NOTE I.

- |  | PAGE |
|--|------|
| The Presbyterian Church in New York—Its Origin—Its Contentious Existence—Dr. John Rodgers—The Political Effect of Presbyterianism in the Colonies. ( <i>Pages 2-8</i> )..... | 389  |

#### NOTE II.

- |   |     |
|---|-----|
| George Duncan Ludlow, Justice of the Supreme Court, Superintendent of the Long Island Military Court of Police. ( <i>Page 10</i> )..... | 398 |
|---|-----|

#### NOTE III.

- |  |     |
|--|-----|
| General Robertson appointed Governor—His Instructions—The Official Order to seize Rebel Estates, and appropriate them to Loyal Refugees—Instructed to Revive Civil Authority—Refuses and Conceals the Instruction from the Public—Is not included in the Act of Attainder—His American Estate not Confiscated, but enjoyed by him and his Heirs. ( <i>Page 16</i> )..... | 399 |
|--|-----|

#### NOTE IV.

- |  |     |
|--|-----|
| The Tory Livingstons—Philip John Livingston, the British “Superintendent and Manager of Rebel Estates within the Lines”—Strong Loyalty of Livingston Manor. ( <i>Page 16</i> ) | 406 |
|--|-----|

## NOTE V.

|  | PAGE |
|--|------|
| The Four Military "Courts of Police," and their Nine Judges.<br>( <i>Pages</i> 18-22)..... | 413  |

## NOTE VI.

|  |  |
|--|--|
| Crushing the Revolution on the Cromwellian Plan. ( <i>Page</i> 27) 415 |  |
|--|--|

## NOTE VII.

|   |     |
|---|-----|
| Samuel Jones and Thomas Jones Unlawfully Deprived of Lands<br>by Philip John Livingston. ( <i>Page</i> 42)..... | 415 |
|---|-----|

## NOTE VIII.

|   |     |
|---|-----|
| The Gift of the New York City Revenues by Sir William Howe<br>to David Matthews, the Mayor—Matthews not really in-<br>volved in the Hickey Plot. ( <i>Page</i> 48)..... | 416 |
|---|-----|

## NOTE IX.

|   |     |
|---|-----|
| The City Officials of New York in 1776—Their Names—Their<br>Loyalty—David Matthews, Mayor in place of Whitehead<br>Hicks, appointed Justice of the Supreme Court—Sir Wil-<br>liam Howe's Gift of Ferry and other Revenues to Matthews<br>individually. ( <i>Page</i> 50)..... | 417 |
|---|-----|

## NOTE X.

|  |     |
|--|-----|
| The Chamber of Commerce and the Marine Society—Their<br>Loyalty during the War. ( <i>Page</i> 53)..... | 421 |
|--|-----|

## NOTE XI.

|   |  |
|---|--|
| Joshua Loring, Mrs. Loring, and Sir William Howe. ( <i>Page</i> 57) 423 |  |
|---|--|

## NOTE XII.

|  |     |
|--|-----|
| Official Proclamation and Notice of General Robertson, estab-<br>lishing The Long Island Court of Police, appointing George<br>Duncan Ludlow its "Superintendent," and Philip John<br>Livingston, Manager of Rebel Estates. ( <i>Page</i> 65)..... | 426 |
|--|-----|

## NOTE XIII.

|  |     |
|--|-----|
| The British Prohibitory Act—What it really was. ( <i>Page</i> 98) .. | 427 |
|--|-----|

## NOTE XIV.

|  | PAGE |
|--|------|
| Joseph Galloway's forced Construction of the British Prohibitory Act—Adopted by the Continental Congress—Subsequently adopted by the British Authorities in New York as a basis for their Official Plunderings and Rapacity during the War. ( <i>Page 108</i> )..... | 430  |

## NOTE XV.

|  |     |
|--|-----|
| The Author's "Portrait" of Galloway—Did he plan Howe's Expedition to the Head of Elk? ( <i>Page 109</i> )..... | 431 |
|--|-----|

## NOTE XVI.

|  |     |
|--|-----|
| The Effort of its Inhabitants to have Civil Government restored in New York in October, 1776—Petition to the Howes for that object—Its signers' names—Misrepresented by Historians as a Letter of Submission to the British Commanders. ( <i>Page 117</i> )..... | 433 |
|--|-----|

## NOTE XVII.

|   |     |
|---|-----|
| The Proclamations of the British Commanders Establishing the Superintendency of Exports and Imports, and the Military Courts of Police, and other Military Officials in the City of New York. ( <i>Pages 120-121</i> )..... | 454 |
|---|-----|

## NOTE XVIII.

|  |  |
|--|--|
| Names of the British Barracknasters, Quartermasters, and Commissaries in New York during the War. ( <i>Page 142</i> ). 455 |  |
|--|--|

## NOTE XIX.

|   |     |
|---|-----|
| The "City Funds"—Their Treasurer. ( <i>Pages 143-154</i> )..... | 458 |
|---|-----|

## NOTE XX.

|  |  |
|--|--|
| Names of the Officials of the Military Superintendency of Exports and Imports in New York—And those of the Courts of Police there, and on Long Island. ( <i>Pages 162-164</i> )... 461 |  |
|--|--|

## NOTE XXI.

|   | PAGE |
|---|------|
| Arnold's Virginia Expedition of 1781—Time of General Phillips' Arrival in Virginia—Sir Henry Clinton's Acute Provision against possible Treachery by Arnold. ( <i>Pages 177—179</i> ) ..... | 462  |

## NOTE XXII.

|  |     |
|--|-----|
| The Southern Campaign of 1781—The Clinton-Cornwallis Controversy—Clinton's MS. Notes on the Events of the Campaign—George III. Personally Responsible for Clinton's long Command in America. ( <i>Pages 190—200</i> )..... | 464 |
|--|-----|

## NOTE XXIII.

|   |     |
|---|-----|
| Contemporary New York Opinion of Clinton's Responsibility for the Surrender of Cornwallis, and of his Refusal to permit Arnold to Attack Washington—Thacher's Statement—Colonel Henry Lee's Opinion of Clinton and the other British Commanders. ( <i>Page 202</i> )..... | 466 |
|---|-----|

## NOTE XXIV.

|   |     |
|---|-----|
| Joshua Hett Smith's Treason in 1781—He communicates Sir Henry Clinton's Military Details of the Army and Navy at New York to Governor George Clinton—Sir Henry Clinton's Army Returns regularly sent to Washington during two Years—Action of Governor Clinton on the Treasonable Vermont Treaty with Sir Henry Clinton, sent him by William Smith. ( <i>Pages 209—210</i> )..... | 470 |
|---|-----|

## NOTE XXV.

|  |     |
|--|-----|
| The Case of Colonel Isaac Hayne. ( <i>Page 214</i> ). .... | 473 |
|--|-----|

## NOTE XXVI.

|   |     |
|---|-----|
| John Jay's Marriage. ( <i>Page 223, note 1</i> )..... | 474 |
|---|-----|

## NOTE XXVII.

|   |     |
|---|-----|
| Sir James Jay and the Governors of King's College. ( <i>Page 224</i> )..... | 475 |
|---|-----|

## NOTE XXVIII.

|   | PAGE |
|---|------|
| Sir Guy Carleton's "Hostilities" against British Army Corruption<br>in New York. ( <i>Page 227</i> )..... | 480  |

## NOTE XXIX.

|  |     |
|--|-----|
| The "Board of Directors of the Associated Loyalists"—The<br>"Societies," or Armed Bands that they formed—What the<br>Organization was, and its Objects. ( <i>Page 227</i> )..... | 481 |
|--|-----|

## NOTE XXX.

|   |     |
|---|-----|
| Captain Asgill and his Cruel Treatment by Washington's Orders<br>while held in Retaliation for Huddy's Death—Washington<br>denies the Fact, and has his Papers on the Subject Published<br>—Lady Asgill's Appeal to the French Court suggested by<br>Sir James Jay. ( <i>Pages 230—234</i> )..... | 483 |
|---|-----|

## NOTE XXXI.

|   |     |
|---|-----|
| The British Negotiators of the Peace with America—Oswald<br>and Whiteford—Who they were—The American Negotia-<br>tors—Adams's Description of Franklin and Jay—Lord Shel-<br>burne's nickname, "Malagrida," and its origin—His Stock-<br>jobbing. ( <i>Page 237</i> )..... | 487 |
|---|-----|

## NOTE XXXII.

|   |     |
|---|-----|
| The Commission of the British Negotiator, Oswald, drawn by<br>John Jay—The Facts of the Case. ( <i>Page 237, Note 1</i> ).... | 491 |
|---|-----|

## NOTE XXXIII.

|  |     |
|--|-----|
| How the New York Legislature nullified and violated the Fifth<br>Article of the Treaty of Peace, of 1783, providing for the<br>Repeal of Confiscation Acts and the Restitution of Estates<br>thereby affected—The Official Record—The Names of the<br>Senators and Assemblymen in 1784—Chancellor Living-<br>ston's Description of Parties, and of the New York City<br>Members at that time. ( <i>Page 241</i> )..... | 492 |
|--|-----|

## NOTE XXXIV.

|  |     |      |
|--|-----|------|
| How the Fifth of the Preliminary Articles of Peace relative to<br>the Loyalists was Negotiated—Inserted to effect the Success<br>of the Treaty—The Signing of the Preliminary Articles on<br>the 30th of November, 1782. ( <i>Page</i> 243)..... | 497 | PAGE |
|--|-----|------|

## NOTE XXXV.

|   |     |
|---|-----|
| The Three Laws New York enacted in May, 1784, in Violation<br>of the Treaty of Peace—Two of them passed over the Veto<br>of the Council of Revision by more than a two-thirds vote<br>—The objects of each—The Trespass Act of March, 1783.<br>( <i>Pages</i> 248—258)..... | 500 |
|---|-----|

## NOTE XXXVI.

|  |     |
|--|-----|
| Number of the Loyalists who left the Country prior to the Evac-<br>uation of New York—Savage action of the Whigs. ( <i>Page</i><br>260)..... | 504 |
|--|-----|

## NOTE XXXVII.

|  |     |
|--|-----|
| Carleton's Commission of 1782, to Settle Debts due Loyalists<br>since November 1, 1776—Its action. ( <i>Page</i> 266)..... | 509 |
|--|-----|

## NOTE XXXVIII.

|   |     |
|---|-----|
| The New York Act of Attainder, or "Confiscation Act," in full.<br>( <i>Page</i> 269)..... | 510 |
|---|-----|

## NOTE XXXIX.

|  |     |
|--|-----|
| The New York Confiscation Act the result of Sir James Jay's<br>Revenge on the Governors of King's College—Names of the<br>Governors it struck at—Names of the Legislators who En-<br>acted it—History of its Passage and its Defeat by the<br>Council of Revision—Its Reintroduction and final Passage,<br>October 22, 1779—Its severe Condemnation by John Jay—<br>Sir James Jay's Intrigue to return to his Allegiance to the<br>King in 1782. ( <i>Page</i> 270)..... | 524 |
|--|-----|

## TABLE OF EDITOR'S NOTES.

xxxv

## NOTE XL.

|   | PAGE |
|---|------|
| The Bowery Estate of James de Lancey in 1775—Its Forfeiture by the Act of Confiscation—Official Abstract of Sales, 1784 to 1787—Purchasers' Names and Prices in full, and the Amount realized. ( <i>Page 281</i> )..... | 540  |

## NOTE XLI.

|   |     |
|---|-----|
| The Political Parties in New York prior to the Revolution. ( <i>Page 291, Note 1</i> )..... | 559 |
|---|-----|

## NOTE XLII.

|  |  |
|--|--|
| The First two Arrests of Judge Jones for his Political Sentiments—His Paroles—The Captures of Judge Jones and General Silliman—Action of the Connecticut Authorities as to the former—Contemporary Accounts—Mrs. Silliman's MS. Account of both Captures, and the final Exchange of the Judge and the General—Sketch of the latter. ( <i>Page 295</i> ). 560 |  |
|--|--|

## NOTE XLIII.

|  |     |
|--|-----|
| Peter Van Schaack—His Leaving New York—His Departure for, and Return from, England. ( <i>Page 306</i> )..... | 573 |
|--|-----|

## NOTE XLIV.

|   |     |
|---|-----|
| The Burning of Cities, Towns, and Houses, and other Acts of War during the Revolution—The Case of the Acadians. ( <i>Pages 307-314</i> )..... | 574 |
|---|-----|

## NOTE XLV.

|   |     |
|---|-----|
| General Schuyler—His Political Action in 1775—His Military Fame. ( <i>Page 315</i> )..... | 578 |
|---|-----|

## NOTE XLVI.

|   |     |
|---|-----|
| William Alexander, General Lord Stirling—Cause of his going to England—Is sued in Chancery by Peter van Brugh Livingston—The Earldom of Stirling and his claim thereto—His Lottery Scheme to relieve Himself from Debt—His Seat at Baskinridge, its Splendor and its Fall. ( <i>Pages 320-323</i> ) ..... | 579 |
|---|-----|

## NOTE XLVII.

|   | PAGE |
|---|------|
| William Duer—His Origin and Career—His Failure, and the<br>Panic of 1792 in New York. ( <i>Page</i> 324)..... | 587  |

## NOTE XLVIII.

|   |     |
|---|-----|
| George Clinton—His first Office—Marriage—Severity to Loyalists—Mental Characteristics—Bold Speech in the Assembly of 1775. ( <i>Pages</i> 325–329)..... | 590 |
|---|-----|

## NOTE XLIX.

|  |     |
|--|-----|
| The Capture and Subsequent Death of General Woodhull—<br>The Documents Relating thereto—The different Versions of the Story. ( <i>Page</i> 331)..... | 593 |
|--|-----|

## NOTE L.

|  |     |
|--|-----|
| General Sullivan—His Expedition against the Indians of Western New York, and his Method of conducting it, from Norris's MS. Journal. ( <i>Page</i> 332)..... | 613 |
|--|-----|

## NOTE LI.

|  |     |
|--|-----|
| Colonel James Holmes—His own Statement of the Facts of his Career. ( <i>Page</i> 334)..... | 618 |
|--|-----|

## NOTE LII.

|   |     |
|---|-----|
| Sketches of Isaac Sears, "King Sears," and General John Lamb. ( <i>Page</i> 340)..... | 622 |
|---|-----|

## NOTE LIII.

|  |     |
|--|-----|
| Notice of Washington—The Death of De Jumonville—The three Official Accounts: the French, the English, and the Indians—The Terms of the Capitulation of Fort Necessity. ( <i>Page</i> 344)..... | 623 |
|--|-----|

## NOTE LIV.

|   |     |
|---|-----|
| The Emigration and Career of Francis Lewis. ( <i>Page</i> 357)... | 627 |
|---|-----|

TABLE OF EDITOR'S NOTES.                   xxxvii

NOTE LV.

|  | PAGE |
|--|------|
| Sir William Johnson—His Characteristics—Personal Appearance—His Residences—Marriage—Descendants—Death—Funeral—Opening of his Grave and Reinterment in 1862.<br><i>(Page 362)</i> ..... | 637  |

NOTE LVI.

|   |     |
|---|-----|
| The Aid of the British Government to Loyalists before the Peace of 1783—Its Compensation to Loyalists in consequence of the Peace of 1783—Official Account of the Amount Claimed and Granted..... | 645 |
|---|-----|

NOTE LVII.

|   |     |
|---|-----|
| Treaty of Peace of 1783 in full—Its Ratification—The Recommendation of the article relating to the Loyalists by Congress to the States..... | 664 |
|---|-----|



# HISTORY OF NEW YORK.

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## CHAPTER I.

In April, 1780, General Robertson returned from England to New York, and issued a proclamation setting forth that his Majesty had honoured him with an appointment to the Government; that he had brought out commissions for a Lieut.-Governor, and Chief Justice, and was empowered to fill up all the vacant seats in the council; that civil law was speedily to be established, and the courts of justice opened. At the same time, thereby exhorting all his Majesty's deluded subjects to lay down their arms, accept his Majesty's most gracious pardon, return to the blessings of peace, to the restitution of their property, to the enjoyment of their ancient privileges with a renewal of their charters, and to all the happiness naturally attendant upon, and flowing from, the restoration of the civil law, and the opening the courts of justice. The inhabitants within the British lines, long oppressed by the imperious mandates and tyrannical sway of the military, were charmed with the thoughts of being restored to the enjoyment of civil law. And while one and all were congratulating each other in expectation of a speedy delivery from the tyranny and despotism with which they had been governed for the last five years, and in

daily hopes of seeing the courts of law opened, and justice executed in its ancient constitutional mode, to their great surprise, early in the month of June, 1780, another proclamation was issued and published by his Excellency the Governor, not for the establishment of civil law, nor for opening the courts of justice, but for establishing upon Long Island an arbitrary, despotic, court, called a Court of Police, for trying and determining all causes of every kind and nature, as well real, personal, criminal, or mixed, upon principles, as it was said, of equity and justice, but without the aid or assistance of a jury, and appointing a "Superintendent" of such court, an assistant, and other officers necessary for the complete formation of this little inquisition. In October following, a like proclamation was published, erecting a similar court, invested with the same powers, upon Staten Island; and in the month of December in the same year a third proclamation made its appearance, erecting another court of the same kind in the city of New York, subordinate to the one established by General Howe's proclamation of 1777, and appointing the necessary officers. This last court was restricted in its civil jurisdiction, and was to take cognizance only of all causes, actions, and debts under ten pounds, with full power, however, to apprehend, commit, and punish, criminals of every kind.

In the fall of the year 1780, a plan was projected in New York, of which Elliot the Lieut.-Governor, and Smith the Chief Justice, were at the head, to apply to the General to have the new brick Presbyterian meeting-house, then a British hospital, put into the possession of that congregation, and for permission for Dr. Rogers, who had left New York with the rebel army, when they abandoned the city, to return and perform

divine service therein. Robertson, the Governor, promised all his assistance, and an application was actually made to the Chief Commander. But the scheme getting wind, Doctor Booth, the superintendent of the hospitals, warmly protested against the measure, unless the applicers would procure another house equally convenient for a hospital, which they not being able to do, and the Loyalists within the lines raising such a commotion upon the occasion, and so strongly representing the danger of introducing a rebel preacher within the city, the design proved abortive. At the head of this plan Elliot and Smith appeared. Rogers was well known to them both. They knew him to be a person of rigid republican principles, a rebellious, seditious, preacher, a man who had given more encouragement to rebellion, by his treasonable harangues from the pulpit, than any other republican preacher, perhaps, upon the continent. This was a fact well known to both the Lieut.-Governor, and the Chief Justice. They belonged to his congregation, they were his hearers, he was their preacher, and they communicants of his church. No real Loyalists would surely have thought of introducing such an incendiary into the city, and there to be employed as a public preacher. Yet Smith, and Elliot, with the assistance of his Excellency the Governor, attempted it.

The character of this Dr. Rogers is too notorious to be passed over without some few anecdotes of his political conduct. He was, prior to, and at the commencement of, the later troubles in America, senior minister of the Presbyterian meeting-houses in New York. He soon appeared a most zealous stickler against Great Britain, in favour of Congress, republicanism, and, as it was termed, "the rights of mankind." Being a min-

ister, he had free access into all the families of the Presbyterian persuasion, consequently of using his influence, and doing a great deal of mischief. His influence was accordingly, upon all occasions, exerted to the prejudice of Britain, and much mischief ensued.

In the year 1775, when Congress had commenced (contrary to their repeated declarations and professions, and contrary to the very tenor of their officers' commissions), an offensive war against Great Britain by forming an expedition against, and actually invading, his Majesty's Colony of Quebec, this same Dr. Rogers did, during the siege of St. Johns by General Montgomery, under a commission from Congress, repeatedly, and constantly, in the public and open meeting-house, in the face and hearing of his whole congregation, offer up prayers to Almighty God for the success of that expedition, and that He would speedily cause the place to surrender to the arms of those who were fighting for the liberties, and privileges, of the Colonies, and exposing their lives in defence of the "natural rights of mankind." That on the very next Sunday after an account was received of the reduction of that fortress, this same identical Dr. Rogers, in full congregation, did in his prayers publicly, and solemnly, return thanks unto Almighty God for his having vouchsafed to crown Montgomery's army with success, and praying a continuance of the like success in the future operations of that army upon their further entrance into Canada, and that in the end, he would be favourably pleased to put all the strongholds in that country into the hands of "the righteous ones, who "were fighting the battles of the Lord." Will not all England be surprised, when I further add, that Elliot and Smith, both holding commissions under the

King, were present when Rogers uttered these prayers, that neither of them noticed the offence, but suffered it to pass off with impunity. Why did not Elliot as a crown officer give information against the traitor? or why did not Smith, who, as one of the Council, was a justice of the peace, commit the culprit? The treason was uttered in his presence, and by his oath he was bound to have taken cognizance of it. Strange as it is, neither of these gentlemen ever concerned themselves in bringing to justice a person guilty of so traitorous a conduct. And yet these are the men who, in the most critical and dangerous times, Government thought proper to promote; the first to be Lieut.-Governor and a member of his Majesty's Council, the second to be Chief Justice of New York, and both, counsellors to the Commissioners for restoring peace to the Colonies. What strange infatuation!

I have not done with Dr. Rogers yet. In the year 1772, while General Tryon was Governor of North Carolina, and had just received a commission appointing him Governor of New York, in the room of Lord Dunmore promoted to the government of Virginia, an insurrection which had been growing for a considerable time among a set of people in the back parts of North Carolina, who called themselves "Regulators,"<sup>1</sup> had broken out to a most alarming degree, and threatened the colony, in defiance of the civil power, with total and immediate destruction. The whole

<sup>1</sup> These people had been for many years oppressed by the extortion of lawyers. They repeatedly applied for redress, but could get none. The law had too much interest. They therefore took the foolish resolution of doing themselves justice, in consequence of which, they entered the Courts, turned the Judges out of doors, seized upon the lawyers, some of whom they ducked in ponds, some they tied up to trees and severely flagellated, and others they put in the stocks. From this conduct they took upon themselves the name of "*Regulators*."

province was in confusion. All was in alarm, and the most fatal consequences expected. The Governor was upon the point of embarking for New York. All eyes were turned upon him. He was entreated to stay, and take means for the suppression of this dangerous insurrection. He listened to the voice of the people, and his voyage was postponed. The Assembly was called together, and an act passed for raising a body of men to march against the insurgents, for clothing, arming, and paying them. The Governor was, of course, their commander. The Assembly also passed an act declaring the insurgents in open rebellion; and attainted, and outlawed, about a dozen of their principal leaders. As all the men of landed property, and the mercantile part of the province, were deeply interested in the suppression of the insurrection, they unanimously exerted themselves. The men were soon raised, clothed, and armed, and the Governor, at the head of his little new-raised army, marched for the back parts of the province. Of this the insurgents were soon apprised, and prepared for their defence. Upon the banks of the Almanza the two armies met, and a battle took place. The king's troops were victorious. The rebels were defeated. Some were killed, some were wounded, and many taken prisoners. Six of the ring-leaders, who were outlawed and attainted, were hanged upon the field of battle. This well-timed severity had its effect. Upon a proclamation being issued, offering his majesty's free pardon to such as should come in and lay down their arms, one and all appeared, submitted to Government, renewed their oaths of allegiance, and took another engaging never again to take up arms against the King of Great Britain. This done, they were dismissed. All was instantaneously

peace. The army returned, were paid, and discharged.<sup>1</sup> The Governor embarked and arrived at New York in a few days, where he was received with the acclamations of a then grateful and happy people. The republicans, however, secretly murmured, privately taxed his excellency with being a murderer, and called him in their nocturnal clubs, and cabals, (of which Alexander McDougal, Isaac Sears, John Lamb, Thomas Smith, John Smith, Joshua Hett Smith, and Peter R. Livingston, often before mentioned, were the principal leaders), by the nickname of "Billy, the Butcher." But as all this was under the rose, matters not being yet brought to maturity, it had little effect, and went unnoticed. At New York, General Tryon received his majesty's warmest thanks for his bravery, his conduct, and spirit, with that of his little loyal army, in quelling the rebellion in North Carolina.

When Congress, in 1775, had declared war against Great Britain, and ordered an army raised, they fixed their eyes upon this body of men, still called "Regulators." They were a hard set of fellows, used to the woods, and perfect masters of the rifle. The gaining of these people was a matter of consequence to Congress. Recruiting officers were sent amongst them; every measure, every scheme, every persuasion, was used in order to prevail upon them to enter into the service of Congress, but without effect. They

<sup>1</sup> Had the same vigorous, spirited, and salutary steps been taken by General Howe upon the defeat of the rebel army upon Long Island, in 1776, the same good consequences would have ensued. But the two Generals were actuated by different motives. Tryon marched with a fixed resolution of putting an end to the rebellion in North Carolina. On the contrary, it seems Howe thought the rebellion which his sovereign had sent him to America to quell, wanted *nursing*. He accordingly treated it with *caudle*, *plum cake*, and *gingerbread*, till the *bantling* grew, in a few years, so mighty stout, as to be an overmatch for him, his successors, and even for John Bull himself.

urged as an excuse, the oath they had taken, and the impropriety of taking up arms against their sovereign as long as that oath continued in force. Perjury, they said, should not be added to their other crimes. The recruiting parties met with no success. They returned to Congress and made their report. Congress, ever quick at expedients when serviceable to their cause, resolved that the oath was taken by compulsion, and was of course unjust, illegal, not binding, but absolutely void and of no effect. That as the "Regulators" were chiefly Presbyterians, some ministers of that persuasion should be sent to convince them of their error, and if nothing else would do, to absolve them from their oaths, for surely if Congress could absolve the whole thirteen colonies from their oaths of allegiance,<sup>1</sup> a parson of the holy religion of John Calvin might absolve a thousand individuals from theirs. It was therefore agreed, that this same Dr. Rogers, in conjunction with a parson Caldwell,<sup>2</sup> should undertake the arduous task. They accordingly set out from Elizabethtown, and after travelling more than 600 miles in the sultry heat of summer, arrived upon the frontiers of North Carolina, where these "Regulators" were peaceably and quietly living upon good farms, enjoying, with their wives and children, all the conveniences, with some of the luxuries, of life. They were called together. Praying, preaching, and exhorting, followed of course. They were made to believe the oath they had taken

<sup>1</sup> See the rebel Declaration of Independence of the 4th of July, 1776, wherein Congress assume a power of absolving all the inhabitants within the thirteen revolted colonies of their oaths of allegiance to their sovereign.

<sup>2</sup> A Presbyterian parson of Elizabethtown, in New Jersey. He afterwards served as a commissary in the rebel army, and was, in 1781, killed in a skirmish near Elizabethtown Point.

was compulsory, not binding in the sight of God or man ; that the king had broken his coronation oath, that he was turned Roman Catholic, and about establishing the Romish religion throughout the continent, and to make slaves of his Protestant subjects. To oppose which, was the only object of Congress, the only wish of the colonies. To assist this noble undertaking, they were entreated to enter into the service of Congress, which they were told would be serving God, themselves, their country, and posterity. Being chiefly Presbyterians, and of little learning, they were seduced by the arts and craft of the two priests, who having absolved them from their allegiance, and the oath before-mentioned, they entered into the service of rebellion, and were sent, some to Boston, some to Charleston, and some to other parts of the Continent, to fight battles in which they had no concern. They have been long since expended, their families ruined, and their estates laid waste. This is that Dr. Rogers whom Governor Robertson, at the request of Elliot and Smith, used his interest with the General commanding to have introduced into New York for the purposes aforesaid ; and this is that same Dr. Rogers whom the General, upon the application aforesaid, would have admitted, had it not been for the clamour of the loyalists, and the positive declaration of Dr. Booth that the meeting-house, then a hospital, should not be given up, and the sick turned out of doors to make room for a preacher of notorious rebel principles. Elliot and Smith, finding it an unpopular piece of business, dropped the further prosecution of their design, and thus the matter rested.

It has been already mentioned that General Robertson arrived at New York from England, in 1780, and

published his commission as Civil Governor of the province. Mr. Elliot, as Lieutenant-Governor, and William Smith, as Chief Justice, were also published. Ludlow, who, prior to Smith's appointment, was the senior Judge, was disappointed, vexed, chagrined, and mortified. No wonder, when he saw *disloyalty* preferred to *loyalty*, *republicanism* to *monarchy*, and *Presbyterianism* to the *Established Church*. No wonder, I again say, when he saw a practising attorney of *suspicious political principles*, taken from the bar, and put over the head of a gentleman of known loyalty, and fixed principles, in his attachment to his sovereign, and the Constitution of Britain. A person who had served upon that very bench for more than twelve years with honour, credit, and reputation, and whose impartiality, and sound judgment, in all his legal decisions, were universally approved, and applauded by the inhabitants of the colony, and who had regularly attained from the lowest seat upon the bench to within almost the reach of the very highest. To have the laurel, the honour, the consequence, which he had been looking forward to, for perhaps more than twenty years, snatched from him when almost within his grasp, and that by a noted *republican*, a rigid *Presbyterian*, a practitioner at the bar, of the very court of which Ludlow was the senior Judge. This was enough to vex and chagrin any gentleman possessed of a sense of honour, both nice and delicate. Ludlow enjoyed each. He was, therefore, hurt at the new promotion. He repaired to New York, waited upon the Governor, warmly expressed his sentiments at such unexpected usage, reprobated the appointment in the strongest terms, resigned his commission, and retired in disgust. This was unexpected. It operated

like a thunderbolt. The Ministry had been made to believe that the promotion of Robertson, Elliot, and Smith, would be received with universal satisfaction and approbation, throughout the province; that it would be highly pleasing to the people; that all parties would be reconciled; that thousands would lay down their arms and return to their allegiance; in short, that rebellion would, by this measure, be almost annihilated within the colony. The resignation of Ludlow gave the lie direct to the promises made by Robertson, his friends, and the relations of Elliot, to the American Minister. Something was to be done, and that speedily. Ludlow was beloved, had large connections, opulent friends, was in high estimation, had never swerved from his loyalty; and the promotion of Smith, in preference to him, gave universal disgust, and much clamour was apprehended. Robertson, Elliot, and Smith, upon this occasion, had a conference. Smith, ever ready at expedients, supposed (as Sir Robert Walpole in his time often declared), "that every man had his price, if such price could be "properly ascertained." The experiment was at least thought worth a trial, the management and execution of which, was left to the Governor. He sent for Ludlow, talked with him, flattered him, caressed him, joked with him, and, after a great deal of seeming friendship, expressed his sorrow at Smith's appointment in preference to him, declared it was none of his doing, that Smith had friends of note in England, who had procured the commission, and that the matter had been settled without the least interference of his; nay, that the business was accomplished without even his knowledge; pretended to be mortified that Government was likely to lose the services of so worthy, sen-

sible, judicious and loyal a subject, and in short to compensate for the disappointment, offered to make him Master of the Rolls, then vacant by the death of James Jauncey, junior, Esq., an office more honourable, more lucrative, and higher in rank than that of a puisne Judge of the Supreme Court.<sup>1</sup> Ludlow was given to understand by the Governor, that he intended to erect a Court of Police upon Long Island, and that he should be the "Superintendent" or Judge, with a salary of 365 guineas per annum. (This promise, by the by, was in direct violation of a former one made in writing in the Governor's own hand, and under his own signature, to a Mr. Charles McEvers). The bait took, Ludlow was pleased, animosities instantly ceased. In short, the hatchet was buried.<sup>2</sup> A commission for Master of the Rolls passed the seals, and a proclamation (at that time the law of all laws in the British lines), was published, establishing a Court of Police upon Long Island, and appointing Ludlow the Superintendent. He opened his office at Jamaica, in Queens County, appointed an assistant, a treasurer, clerks, petty officers, waiters, door-keepers, messengers, attendants, &c. Most of them were his relations, his particular friends, or his dependants. The inquisition thus formed, Ludlow at once became "*The little tyrant of the Island,*" and exerted his power and authority accordingly.

Shortly after this, Ludlow received another appointment. Long Island had become the avenue through which a number of people there, in conjunction with the merchants in New York, supplied the New Eng-

<sup>1</sup> The salary of the Master of the Rolls was £300 a year, besides large fees, perquisites, and emoluments. This rank was next to that of the Chief Justice of the province.

<sup>2</sup> An Indian term for the conclusion of a peace.

land colonies with goods. These goods were carried to the east end of the Island, transported to Connecticut, and thence found their way into all the New England colonies, and were disposed of at an amazing profit.

By a proclamation of General Howe, published in November, 1776, and continued by his successor, and the respective commandants of the city, no goods could be sent out of the town without a permit from the Superintendent of exports and imports. It was soon found necessary, from the number of permits applied for, to grant none, unless the person applying brought a recommendation of his loyalty, his honesty, his attachment to Government, and that the goods applied for, were for the use of the Island. The Governor of the province at times, and the Generals at other times, had vested this power, at different periods, in different persons. It had been in the Colonels of the militia of the several counties, in the Judges of the Inferior Courts of Common Pleas, in a Justice of the Peace residing in each town. But for some time before, and upon Robertson's appointment to the Government, it was solely vested in the commanding officer of the King's troops upon the island, and was then possessed by General De Lancey, who was serving there in that station. A trade with the New England Colonies had been found beneficial, no ways prejudicial to the King's service, provided powder, lead, flints, and other military stores, with coarse clothes, were not included. It brought provisions of all kinds in great abundance to the New York markets, and was a means of distressing the rebels, as it drained them of their hard money, (for nothing but hard money or provisions would the merchants take for their

goods). It was therefore connived at. The merchants had a large vent for their merchandise. It was of service to individuals. It assisted the royal army, and it distressed rebellion. Robertson the Governor, Elliot the Lieut.-Governor, and Ludlow the Superintendent of the "Court of Police" upon Long Island, thought that for this lucrative trade the merchants could afford to pay handsomely. No fee could be charged for the pass, as the trade was illegal, illicit, and carried on by connivance only. The office of imports and exports was restrained by General Howe's proclamation from taking any fees whatever. The militia officers, the Judges of the Inferior Courts, the Justices of the Peace, and the commanders upon the Island had never taken, or ever thought of taking, any fee, gratuity, or present, for a recommendation to the Superintendent's office in New York. Robertson was "*a knowing one*," he had been a barrack-master, a quarter-master, in short, a Jack-at-all-trades in the money-getting way. Elliot had been long a Custom House officer in a city remarkable for smuggling. He understood the business as well as the best of them, had a large family, loved money, and was a Scot. It was agreed to lay this trade under contribution, by obliging the people applying for recommendations to pay large gratuities for the same. How to accomplish the business was the difficulty. The power was in General De Lancey, who now commanded upon the island. The General loved money. This Robertson well knew. He was old and irascible; but then he was honest, firm, and steady, of nice honour, great delicacy, and unbounded integrity. This Robertson also knew. De Lancey was therefore not the man. He was therefore not to be entrusted with the secret. This might probably

spoil all. He was, however, in full possession of the power. How to get it out of his hands was the question. A consultation was held, and Ludlow undertook the task. He waited upon the General with the Governor's compliments, and after a little conversation acquainted him that his Excellency thought it best, (if not disagreeable to the General), that all matters in the civil department should be transacted in one office, and therefore proposed that the power of granting recommendations for goods, should be lodged in the Court of Police. That as it was attended with a great deal of trouble, and no profit, and the General full of business in his military department, the Governor supposed the General would be glad to get rid of it. The General was fairly taken in, he had no suspicion of the design, relinquished the power, and Ludlow instantly became possessed of it. And if what report said at the time was true, it soon became a most lucrative branch of business, the profits of which were equally divided between Robertson, Elliot, and Ludlow.

It grieves me to add that after Ludlow's appointment to the several offices aforesaid, he became so connected with, and so much influenced by the Governor, that (forgetting his former good and amiable character) he implicitly countenanced, and justified, all Robertson's unjust and arbitrary acts, and in many instances, gave, supported, and maintained, opinions, in order to serve the Governor's dirty purposes, or gratify his grasping, avaricious soul, manifestly contrary to law. He was included in the act of attainder passed by the Legislature of New York, in October, 1779. He was therefore obliged to leave New York upon its evacuation in November, 1783, and go to England, where, as one turn deserves another, he was, upon the

formation of the Colony of New Brunswick in Nova Scotia, through the interest of Robertson appointed Chief Justice thereof, with a salary of £500 sterling a year.

Upon General Robertson's arrival in New York from England, in April, 1780, and publishing his commission as civil Governor of the province, he issued an advertisement in all the public papers setting forth, "that it was his Majesty's orders that all *rebel estates* "within the British lines should be seized upon, taken "into the hands of Government, and appropriated to "the use of the refugees, excepting such as should be "wanted for the King's use."<sup>1</sup> Shortly after this Philip John Livingston, Esq., was appointed by the Governor, with a salary of £200 sterling per annum, rations of all kinds for his family, besides a large valuable rebel estate within ten miles of the city, worth at least £400 a year, which had been before given him as a refugee,<sup>2</sup> Superintendent, Director-General, Overseer, and Manager, of all the "rebel estates" within the lines, with orders to make out a list of every such

<sup>1</sup>If such an order actually did exist, nobody within the British lines at New York ever saw it, the Governor, Lieut.-Governor Ludlow, Philip John Livingston, the appointed Superintendent of all such estates, and Samuel Bayard, Jr., Esq., who Robertson, upon his arrival, made Secretary of the province, excepted.

<sup>2</sup>Livingston was some years before, and at the commencement of the rebellion, High Sheriff of Dutchess. Upon the reduction of New York by the British army, in 1776, he obtained leave from the rebel powers to remove with his family and property to New York, under pretence of going to the Island of Jamaica, where he had the fourth part of a good and valuable plantation. He was not banished, he was not forced away, nor did he run away. He came into the British lines with the permission of the Provincial Convention, at that time, in a great measure, governed by his relations, the Livingstons: he had also leave to bring away all his effects. For this he was dubbed into a refugee, and for this, the rebel estate before mentioned was given him as a compensation for his losses. *This gentleman, however, his father, and his brothers were all loyal;* the only branch of the numerous, extensive, family of the Livingstons that was so. He had two brothers that served as officers the whole war in Fanning's Provincial Corps.

estate, in whose possession, the quantity of land, claimed under what pretence, the improvement and buildings thereon, &c.; and by a certain day to deliver such inventory to his Excellency, that the proper steps might be taken for carrying his Majesty's orders into execution, by accommodating the refugees with small proportions of rebel land, by which they might maintain themselves without being an incumbrance upon Government.

Livingston issued his orders to the several Sheriffs of the several counties within the lines to make out the lists above mentioned of the several rebel estates within their respective districts, and by a certain day therein named, to deliver the same to him at his house at Hellgate, near Newtown, or to Mr. Samuel Bayard, Jr., at the Secretary's office in New York, that the same might be laid before his Excellency for his further orders and directions. Peremptory enough this! It was asked at the time what power Livingston had over the Sheriffs? Or what the Sheriffs as *civil officers* had to do with this new *military appointment*? The answers were plain, short and concise, to wit: "It is "the Governor's orders, and they must and shall be "obeyed."

It has been already observed that the inhabitants within the British lines had, upon the appointment of Robertson, been informed by numbers of letters from England, that civil law was to be re-established, and the courts of justice opened. Robertson upon his arrival insinuated as much, and his first proclamation, inviting the rebels to lay down their arms, return to their allegiance, and enjoy their estates in peace and quietness, with a renewal of their former grants and charters, strongly corroborated the report. While all

were in expectation of this glorious and long wished-for event taking place, and congratulating themselves upon the happy occasion, and while the rebels without the lines, and those within, still attached to the cause, were in the utmost consternation, lest a matter of such consequence, likely to be so propitious to the British interest, and prejudicial to theirs, should take place, the appointment of Livingston to examine and inspect the titles, situation, possessions, claims, and demands of, and upon, all rebel estates (only proper for, and cognizable in his Majesty's courts of law) gave a strong suspicion that Robertson had no such orders. Or if he had, it was neither his intention nor inclination to carry them into execution, and this was shortly after most fully and fatally confirmed by the establishment of three more arbitrary, illegal, tyrannical, and unconstitutional, Courts of Police, in addition to the one established by General Howe; one upon Long Island, another upon Staten Island, and a third in the city, subordinate to that constituted by General Howe, with full, large, and ample, powers to try all causes, hear all disputes, and settle all controversies of every kind whatever arising within their several jurisdictions, upon principles of "equity and justice," as the proclamations, by which they were established, asserted, which were then subsisting, or had arisen subsequently to the 1st of May, 1777; on which day the first Court of Police ever known in New York was erected by a proclamation of General Howe. Antecedent to this date the proclamation gave them no power, but on the contrary, expressly forbid their interfering in any controversies, or taking cognizance of any debts which had arisen, or been contracted, prior to that day.

Upon this the sanguine hopes entertained by the Loyal inhabitants within the lines, of a restoration of the civil law, a revival of the courts of justice, and of having all civil actions as well as criminal prosecutions tried in the old, ancient, constitutional, way, by sworn judges, with the assistance of juries (that bulwark of English liberty) vanished in an instant. The reasons were asked, and the people given to understand, that the then situation of affairs would by no means admit of a restoration of the civil law. What the particular reasons or circumstances were, never were explained to the Loyalists. They were known only to the Governor, the General, the Police officers, the Superintendent of rebel estates, the Mayor of the City, the Commandant of the City, the new commissioned Provincial Secretary,<sup>1</sup> and the principal officers of the army. But the honest, steady, loyal, inhabitants were puzzled to find out why all causes, disputes, and controversies, within the British lines, could not as well, if not better, and more to the satisfaction of the people, have been tried, ended, and determined, in the old constitutional way, in the usual and customary courts of justice, where the Judges and jurors were under solemn and sacred oaths to discharge the great and important trusts vested in them by the English Constitution, and the Municipal laws of the province, than in such new erected, illegal, arbitrary, and unconstitutional Courts of

<sup>1</sup> Samuel Bayard, Jr., Esq., who the Governor thought proper to make Secretary of the province, in the place of Mr. Knox, the English patentee. What right Robertson had to do this he best knows. And whether Mr. Bayard, who was Mr. Knox's deputy, could with honour accept of the appointment, he best knows; but he accepted the commission and took the fees of office in exclusion of his principal, to whom, after this appointment of Robertson's, he never accounted. The fees became exorbitant, and Robertson received a share of them. There was no law, the Secretary charged as he pleased, all were obliged to pay.

Police ; where everything was transacted in a different manner from the ancient mode of trial, where there were no juries, and where the Superintendents, the Judges, of these new fashioned courts, were not under even the solemnity of an oath, and from whose judgments and decisions there were no appeal. Their decrees, like those of the *Medes* and *Persians*, were irreversible, unimpeachable, and irrevocable, were they ever so illegal, arbitrary, unjust, or repugnant to law, equity, or justice. And here the Governor might with great propriety have been asked, whether he had ever time (from his other more consequential avocations, that of running after, kissing the fingers, and kneeling at the feet, of all the pretty little misses in town) seriously and deliberately to have perused those instructions which he received from his Majesty, with a commission, as a guide to his conduct ? And if he did, whether he did not find one amongst them, absolutely and positively ordering him by no means to erect or establish any new court, or courts, in the province under his command ? And if he had found such an instruction, (which I am told he was actually possessed of) he might have been further asked, whether he did not think that the erection, and establishment, of three Courts of Police, by his sole authority, under the power of proclamations, not only a breach, but a manifest violation, of an instruction, which his royal master intended as a rule, a guide, and a direction to him, in the loyal Government of the Colony committed to his care.

In the establishment of these Courts of Police, and the powers given them by the proclamation, it appears an absurdity, that a just, honest, legal debt, due perhaps from a wealthy man, to another in real want,

should be irrecoverable and lost to the creditor, because contracted before the 1st of May, 1777, when a debt contracted on the 2d of May, 1777, should be recoverable. Yet this was the case. But it seems the General, the Governor, the Commandant of the city, the barrack-masters, the quarter-masters, commissaries, the Mayor of the city, and some favourites, had particular purposes to serve, and the erection of such courts with such abridged, limited, and restricted, powers, answered their designs. It prevented the recovery of large debts justly due, and put it in the power of certain persons to make large fortunes with the use of other people's money. And it did (which perhaps was never intended) put it in the power of villains to defraud the poor, the widow, and the fatherless. The abolition of the Courts of civil law, and the establishment of these new ones, entirely answered the purposes of the military, for being courts of a General's or a Governor's creation, the Judges, or Superintendents, were solely in their power, were their tools, and could be displaced at their pleasure. Their salaries were dependent upon them, they were subservient to all their whims, did what they were ordered, behaved as submissively as spaniels, and acted like so many cyphers. No prosecution could be carried on, no trespass punished, nor a debt recovered, where an officer, a commissary, a barrack-master, a soldier, a conductor, a wagon-driver, or any other dependent upon the army, was concerned. Over the military these courts claimed no power, took no cognizance, nor exercised any jurisdiction.

It was frequently remarked, that among all the Judges of the several Courts of Police, established under the power of proclamation, there were but two

gentlemen, (though there were four Courts and nine Judges) only one of whom understood a syllable of law. One of these was Mr. Ludlow, who has already been mentioned as having so far perverted his own natural good sense, and former amiable character, in consequence of the honourable and lucrative places conferred upon him by the Governor, as to have prostituted the laws of the land, by giving illegal opinions, making arbitrary decisions, and distressing his majesty's loyal subjects, to please, and serve the pecuniary purposes of, the avaricious old Robertson. The other was David Matthews, Esq., then Mayor of the City of New York, and who, though Mayor, like most other American Mayors, was a mere ignoramus in matters of law, and knew as little of the laws of the land, the acts of the province, or the Constitution of England, as any common pack-horse in the country.

Had the civil law been opened, as was fully expected, and as the ministry intended; upon Robertson's arrival, the Courts of Justice must have taken their places in every department, from the High Court of Chancery down to that of a Justice of the Peace. The civil ministerial officers of Government would have had their power and authority reinstated, equally with those of the judicial. An Assembly must have been called, whose business it would have been to have inquired into, and taken cognizance of, all such rebel property as was not cognizable in the courts of law. All taxes must have been laid and appropriated by this body of men. Taxes can be legally laid, raised, and appropriated, in no other way. The militia must have been embodied and regulated by an act of theirs. All legislative business must have been transacted by them. Meetings of the Common Council agreeably to

the City Charter, must have been held. It was natural to suppose their first inquiry would be about their funds, and to discover, if possible, to whom the Corporation revenues had, from September, 1776, been paid, and how, in what manner, by whom, and to what purposes, appropriated. Officers would have been sued, and compelled to pay their just debts. Barrack-masters, quarter-masters, and commissaries would have been prosecuted, and punished for the plunder, robberies, and other illegal acts, daily committed by them, and their dependents, upon his majesty's loyal subjects. The Court of Police, established by General Howe, must have been abolished. No new Courts of Police could have been erected. The Mayor must have been deprived of all that mighty, uncontrollable, power which he then had, and wantonly exercised, under the law military.<sup>1</sup> The office of Commandant of the City, with a number of other useless, lucrative employments, contrived to rob the nation, and fill the pockets of favourites, must have been abolished, and all rapine, plunder, and extortion, made punishable in legal courts of law. These were considerations truly and really alarming. A consultation was held. The General, the Governor, the Comandant of the City, the Mayor, and all the upper officers of the Courts of Police, with the Superintendent of Exports and Imports, were present. It was unanimously resolved at this virtuous Board, that a revival of the civil law and opening the

<sup>1</sup> The Mayor laid all the butchers in the New York markets under contribution, and compelled each to send him every day what provisions he wanted for himself and family, under pain of being turned out and excluded from the benefit of having stalls, or of vending their provisions within the limits of the city. They were obliged to comply, and the Mayor was supplied with his provisions without any charge or expense. It was a free gift, or what in the reign of Charles the First was called a "*Benevolence*"—a compulsory gift.

courts of justice would be extremely improper. The reasons have been already given ; they are obvious to every disinterested person. As it was resolved improper to revive the civil law, it was also determined at this consultation, that everything civil, as well as criminal, should be tried either by court martial, or Courts of Police. These courts were accordingly, by proclamation, invested with all the powers of government, as well ministerial, and judicial, as executive. In the full possession of all these powers did these arbitrary and despotic courts continue, to the great dissatisfaction, and manifest injustice, of at least 60,000 of his majesty's loyal subjects, then living within the British lines, until the evacuation of New York, in December, 1783.

In a conversation, at which I was present, between Mr. Ludlow, a few days after his being commissioned Master of the Rolls and appointed Superintendent of the Long Island Police, and a gentleman of note, relative to opening the Courts of Law,<sup>1</sup> the former declared, that such a measure could not be adopted with propriety, that it would be inconvenient, prejudicial, and injurious to the king's service, that the Governor did not intend to pursue, nor put any such scheme into execution, and that in this he thought him perfectly right. He further added, that upon the conquest of Georgia, the civil law had been restored, and

<sup>1</sup> Daniel Kissam, Esq., a gentleman of property, one of the members in General Assembly, and one of the Judges of the Court of Common Pleas for Queens County, upon Long Island. A noted loyalist, he was included in the New York Act of Attainder of 22d October, 1779, and his estate confiscated. He died in 1782, in consequence of a fall from his horse. His widow and children, after the evacuation, applied to the General Assembly for a restoration of the estate, agreeably to the terms of the provisional articles of the treaty of peace, but in vain. The whole was sold, and the product applied to the use of the State. The widow is since dead, and the children removed to, and settled in, Nova Scotia.

the first action brought, was against a quarter-master, for an act done in his official capacity. This circumstance he held up as a sufficient reason why the civil law should not be revived within the British lines at New York. Upon inquiry, however, it was found that this same quarter-master had been sued for billeting troops upon private houses without the consent of a civil magistrate. For this illegal, arbitrary, and unconstitutional act, was the prosecution commenced, and this, (it was then observed) was so far from operating as an objection against reviving the civil law, that it was one of the most forcible arguments that could be adduced in its favour.

## CHAPTER II.

IN June, 1780, Governor Robertson issued a proclamation, by the advice of the Long Island Court of Police, ordering the inhabitants within certain districts in the County of Suffolk, to cut down all the wood upon the estates of William Floyd, and William Smith, two gentlemen possessed of large real property, and then both in actual rebellion,<sup>1</sup> and to cart and deliver the same at Smith's landing, that it might be carried from thence to New York by water for the use of the army. The labourers were to be paid for this service according to certain stipulations mentioned in the proclamation. The wood was also to be delivered at the landing by certain specified days. The proclamation also enjoined and commanded the performance of the several matters therein directed, on pain, if not performed, of suffering the most rigorous and severe military execution. That troops should be sent amongst them, that they should live at free quarters, and the inhabitants should be laid under contribution. Not a

<sup>1</sup> Floyd was a delegate in Congress, a Senator from New York, and violent in his opposition to Great Britain, and of indifferent abilities. Smith was a member of the General Assembly for the rebel State of New York, was warm, active, and violent in the cause. He was a sensible man. They were both rigid Presbyterians.

labourer turned out ; not a stick of wood was cut ; nor did military execution ever take place. The proclamations of Generals and Governors were become mere farces. The loyalists laughed at them, the rebels despised them, and by both they were held in contempt. They were great favourites with Governors, Generals and Commissioners during the whole war. The American rebellion was the first (I believe) in the universe attempted to be crushed, and reduced, by proclamations. It might have been seen with half an eye at first, that a rebellion carried on with spirit, resolution, and perseverance, could never be subdued by lenity, by proclamations, or timidity. And yet, to the surprise of all Europe, did Great Britain attempt by such means to put an end to as obstinate and unprovoked a rebellion as ever existed. Whereas decision, spirit, resolution, and rigid severity, would very soon have accomplished the business. The most rigid severity at the first would have been the greatest mercy and lenity in the end. It would have saved the lives of at least 100,000 brave men, the sacking and burning of towns, and the plundering and pillaging of thousands of peaceable inhabitants. How did Oliver Cromwell conquer Ireland ? By the storm of Drogheda, and putting every soul to the sword. Had this precedent been followed at Fort Washington, in November, 1776, America would have been this day still a territory of Great Britain.

In July, 1780, Governor Robertson issued another proclamation ordering all the farmers in Kings County, Queens County, and in the western parts of Suffolk County, to bring into the several established hay-yards most contiguous and convenient, the one complete equal half part of all such fresh hay as each

farmer should respectively cut that season, for the use of the army. In consideration of which, the proclamation declared that the other half, with all their salt hay, should remain untouched and protected for the use of the several and respective owners. The terms of this proclamation were punctually complied with, without the least evasion whatever, and the hay delivered in, according to its directions, yet (notwithstanding the public faith was promised, and the honour of the Governor pledged for the faithful performance of the conditions of the proclamation), all the remainder of their fresh hay was forcibly taken away by the commissaries, together with one-half of all their salt hay. Complaints of the infraction were made to his excellency. He turned a deaf ear. No redress was to be had. If Providence had not favoured the country with one of the mildest winters, perhaps, ever known in America, not a horse nor a horned beast could have survived the month of March. Nay, had the winter been as severe as the preceding one, all the hogs and sheep upon the Island must have shared the same fate. What confidence could be placed in the word of a Governor, solemnly pledged by a proclamation under his hand and seal, after such a manifest breach and violation of the condition it contained? This was the Governor sent over in the room of General Tryon, in order to conciliate the affections of his majesty's deluded subjects. Was the breach of solemn proclamations a method of reclaiming the deluded subjects of his majesty to a reconciliation with the parent State? Let any reasonable man answer the question. These, however, were the only steps taken by Robertson during his command as Civil Governor of the province. A continued breach of public faith, a constant forfeit-

ure of his word, his honour, and of the most solemn promises.

In the year 1780, also, John Antill, Esq., who had raised a provincial battalion at the commencement of the rebellion, of which he was the Lieutenant-Colonel Commandant, was charged by some of his own corps with having embezzled the stores of the Crown, and drawn for rations for several years for a number of men more than his battalion consisted of. Upon this charge he was put under an arrest, tried, and upon the fullest evidence, convicted, broken, and declared incapable of serving his majesty in the military line in future. This sentence was confirmed by the Commander-in-Chief, and Antill dismissed the service. Yet, strange to tell, and as strange as true, this same broken Colonel was, in about four months, restored to the command of his corps, and that without making any restitution for the money out of which he had defrauded the Crown. Thus went the money of the nation. Thus was the war carried on against the treasury of Great Britain. Such were the steps taken to put an end to rebellion. No wonder John Bull grew tired of the American war. So little was this affair thought of (as plundering, robbing, and pillaging was a trade carried on and pursued with such spirit, vigor, resolution, and avidity during the rebellion), that I was present and heard Governor Robertson wish Colonel Hamilton joy of the restoration of his brother-in-law to the command of his battalion again,<sup>1</sup> especially, added the Governor, as the Colonel has lost nothing but his pay for a few months, and I hope that will

<sup>1</sup> Colonel Hamilton and Colonel Antill married sisters, grand-daughters of the late Lieutenant-Governor Colden, and daughters of the late Alexander Colden, Esq., Surveyor-General of the province of New York.

be also restored. So little were embezzlements, fraud, villainy, and peculation, thought of during the American war.

The Courts of Police have been frequently mentioned. Their evident partiality and disregard of the terms, conditions, and limitations, upon which they were organized shall now be particularized. General Howe, by his proclamation establishing a Court of Police, and Governor Robertson's proclamation erecting three other Courts of Police within the lines, all declared that the Courts thereby established should take no cognizance of debts contracted, or causes accrued, prior to the 1st of May, 1777. (Why the power was confined to a certain day has been already mentioned). In consequence of this restriction, these Police Courts constantly refused to take cognizance of all debts contracted, and controversies which arose before that period; yet with how much ease these new-fangled Judges could break through the terms and conditions contained in the proclamations under which they derived their power, when it suited their own purposes, or those of their friends, the following case will fully show.

Two young men of the township of Oyster Bay, by the name of Young, in the spring of 1776, counterfeited a large quantity of Continental money, not to injure Congress, for they were both strong, steady, staunch, whigs, but under the power of Congress to compel their creditors to take in discharge of their debts. A discovery was made, a complaint lodged, and the provincial Convention, then sitting at New York, ordered the Committee at Huntington to apprehend the fellows, seize their tools, and send them prisoners under a proper guard to the city. This was done. They were lodged in jail and there confined until General

Howe's landing upon Long Island the subsequent August. They were then sent to Connecticut and put into Litchfield jail. In December following they made their escape, and returned to Long Island. All this happened in 1776, prior to the establishment of a Court of Police, and consequently not within its jurisdiction. An action in a case like this, undoubtedly would lie in a court of law for the imprisonment, the Committee having no power to commit, nor the provincial Congress to imprison. Nothing but damages could be recovered, and those damages assessed in no other way than by a jury upon oath. Yet these two hopeful youths took upon themselves to assess their own damages. This done to their own satisfaction, application was made to the Mayor,<sup>1</sup> the acting magistrate in the Court of Police in the city of New York, to issue an execution for levying the damages so assessed, upon the Huntington Committee, and two of the members of the Provincial Convention,<sup>2</sup> all of whom had in consequence of General Howe's proclamation of November, 1776, submitted to Government, renewed their oaths of allegiance, received pardons, and were peaceably living upon their own estates within the British lines, under the protection of the Crown. All the injury that these fellows suffered, happened prior to the 1st of May, 1777, the damages such as they thought proper to ascertain, the defendants never called in to stand a trial, nor controvert the charge. The Mayor, notwithstanding, issued an execution, a militia officer executed it, and the whole demand, as settled by themselves, was levied upon the

<sup>1</sup> David Matthews, Esq.

<sup>2</sup> Samuel Townsend, and James Townsend, Esqs., both of Queens County on Long Island.

goods and chattels, lands and tenements, of the Committee men. These two fellows were the Mayor's friends and favourites, he had touched (by all accounts) some of their money. The law could therefore be strained to serve their purposes, while an honest man was unable to recover a just debt due upon a bond.<sup>1</sup> These two people, through the Mayor's means, were held up to the public, as poor persecuted Loyalists, and as such were employed in lucrative offices in the Commissaries Department. It is a fact, however, well known, that neither of them ever suffered from the rebel powers on account of their loyalty. They were imprisoned and confined for money manufacturing, and that with the design, under the power and authority of Congress, to compel their just creditors (who were loyal subjects) to receive it in discharge of honest *bona fide* debts due by them upon bonds and mortgages.

As I have entered upon Courts of Police, I will proceed by mentioning another of their arbitrary, illegal, unjustifiable, and despotic acts, and let the public judge for themselves. The Court of Police established in New York in May, 1777, of which Andrew Elliot, Esq., was the Superintendent, and David Matthews, Esq., the acting magistrate, absolutely refused to take cognizance of, and compel the payment of a bond executed and the money advanced in July, 1777, (two months after its establishment, and of which that court consequently had cognizance). This affair was strongly urged. It was repeatedly pressed. It was as repeatedly refused. The Court refused to take cognizance of the matter, nor would they hear the complaint. The creditor was left without redress. The debt has been since totally lost. It was then re-

coverable, and the debtor well able to pay. But we had no civil law, we were governed by the military and rascally Courts of Police. The debtor was a field officer in a provincial corps, he had a good estate. Lord Shelburne's peace has deprived him of it, and he is now living in the inhospitable wilds of Nova Scotia.

In the summer of 1780, General Clinton established a post at Smith's farm, upon the south side of Long Island, in the manor of St. George, in the county of Suffolk, about eighty miles from New York, consisting of refugees who left Rhode Island upon its evacuation the preceding autumn. It consisted of about 200 men with a proportionate number of officers, and one Hazard had the command. They took possession of the place, erected a fort, were allowed rations, and plundered the inhabitants far and near. They had arms in their hands, supplied by Government, and a sufficient quantity of ammunition. Complaints were made by the farmers, gentlemen, and inhabitants of that County, to the Commander-in-Chief. No notice was taken of such complaints, nor orders given to put an end to the depredations of this worthless, vagabond, thieving, banditti. Finding complaints, memorials, remonstrances, and petitions, to the British Commander had no effect, notice was sent to Connecticut by some of the people, secretly in the interest of the Americans, begging their assistance to rid them of these troublesome neighbors. A Major Talmadge,<sup>1</sup> in consequence of this application, by orders from General Parsons, passed the Sound from Guilford, in New England, and about ten in the evening landed with about 250 men at a place called the "Old Man's," upon the

<sup>1</sup> The same person before whom poor Major Andrè was carried upon his capture, upon his return to New York, after his conference with Arnold.

north side of Long Island, and after recruiting his men, marched across the Island, arrived at the fort at daylight, and without firing a gun, made the whole garrison (who were all either drunk or asleep, and no sentry posted) prisoners, about 20 excepted who were out upon a plundering party, who made their escape and got to New York. The Commander-in-Chief of the garrison, it's true, was not in the fort that night. He was sent expressly, a few days before, upon some business from General Clinton to Admiral Arbuthnot, then cruising off Rhode Island. The fort was demolished, the provisions destroyed, the arms secured, and the whole garrison carried away prisoners without the loss of a man on the side of the rebels. Talmadge in his way back stopped at a place called Coram, about the middle of the Island, set fire to, and destroyed about 70 tons of good English hay, which had been collected, and there deposited for the use of the British army, and which Mr. George Brindly the forage Commissary had neglected to have removed; though it had been collected for more than three months, and notice had been sent him several times by the collectors apprising him of the danger of leaving it at such a distance from New York without a proper guard for its security. In such a strange manner was the American war conducted.

### CHAPTER III.

LET us now return to the Courts of Police. The one established by the Governor in June, 1780, upon Long Island, of which George Duncan Ludlow, Esq., was the Superintendent, carried things with a high hand. This Court, with the assistance of Philip John Livingston, already mentioned, as commissioned by the Governor as, "Superintendent, Manager, and Overseer," "of all rebel estates within the lines at New York," did in many instances dispossess people of lands farms, and houses, of which they had been in full possession a considerable time before the establishment of, a Court of Police in the province. And as all the proclamations erecting such Courts restricted their power to the 1st of May, 1777, they could not possibly have any authority to meddle with, or take cognizance of, possessions legally taken prior to that day. This was, however, done in many instances. The occupants were turned out, though in full, quiet, and peaceable possession, and such possession *legally* taken by *legal* entries, made in consequence of estates *legally vested* before such a thing as a Court of Police was ever heard of in New York. By law, I am told, that every possessor is supposed to have a good title in his

lands until a better is made to appear. But while the military law existed, and all matters were determined in Courts of Police, a new law was trumped up, by which a *legal* possessor might be dispossessed, and ousted of his property, without a *legal* trial, without an investigation of his title, without an inquiry into the priority of possession, in short without a jury. The process was briefly this: Livingston, the manager of rebel estates, (as they were called) appeared as plaintiff, lodged his complaint with the Court of Police, and claimed the land as rebel property. The possessor was never called in, and of course no defence could be made. Governor Robertson then ordered his Court to enter judgment by default against the person in possession. This the Superintendent, the Judge of the Court, (being the dependent, the tool, the cypher, of the Governor) instantly did. The possessor was then ousted, and the possession given to Livingston by a militia officer in virtue of an order from the Court of Police. From such a judgment no appeal could be brought. The subject was without redress. The legal owner lost his property. The lands were then either given to favourites who destroyed the timber, sold the wood, and ruined the estates, or hired out, and the rents, by the Governor's orders, paid quarterly into the city funds. Let me ask whether such proceedings were not real acts of cruelty, of tyranny, and despotism? Yet to such acts, and to many others of a more enormous kind, were his Majesty's dutiful and loyal subjects within the British lines obliged to submit. The Governor at this very time, in the midst of these iniquitous actions, pretended that he was endeavouring to gain and conciliate the affections of his Majesty's deluded subjects. This was an odd

way of doing it, by punishing the Loyalists, depriving them of their property, and ousting them of their estates. If the Loyalists were thus treated, what had the rebels to expect? Was this the method of paving the way to a reconciliation? Most people, I believe, will answer in the negative. Was it not the ready way to make rebels of those who had maintained their loyalty in spite of every cruel exertion of the usurpation, in spite of every species of tyranny committed by his Majesty's army, the Governor, the Superintendent of rebel estates, and the illegal practices daily committed by the Courts of Police? Let this matter be well weighed, and then let the most hardened sinner judge, whether either justice, impartiality, or honesty, were the principles upon which the Judges of these new-fangled, new-erected, new-established, time-serving, military Courts of Police acted? Everything they did was, in short, arbitrary, despotic, illegal, cruel, and oppressive.

I will now take a cursory view of the steps taken by the Courts of Police, and Philip J. Livingston, the Governor's newly appointed manager of rebel estates, in virtue of the order *said*, or *pretended*, to be from his Majesty, and hereinbefore mentioned, to wit: "to take " possession of and appropriate all the rebel estates "within the British lines to the use of the refugees." A few instances shall now be produced, (out of hundreds committed) of the almighty power assumed by the Governor, his Superintendent of rebel estates, and his Courts of Police. To begin, then:

1st. Joseph Rodman, a reputable farmer, at Flushing upon Long Island, died many years before the rebellion, and by his will devised his real estate to his wife during her *natural life*, and after her death to his

eldest son in fee, and in case of his death under age, and without issue, to his second son in fee. The widow was in full life, and an old Quaker preacher. She had nothing to do with rebellion. The eldest son, a giddy youth, was prevailed upon to act as a committeeman, left Long Island with the rebels in August, 1776, and died the same year under age and without issue. The youngest son was a Quaker of principle, and a steady Loyalist. He was entitled to the estate upon his mother's death. The mother and son lived together upon the estate within the British lines, and under the protection of the Crown. Notwithstanding which, because the first remainder man had been a rebel, though then dead, the mother in possession as tenant for life, and she and her second son both loyal, the estate was seized upon as rebel property. The poor old widow was turned out of doors and obliged to be maintained by her friends, and a parcel of refugees put in possession, who cut down the wood, sold it, and appropriated the produce to their own use, burnt up the fences, ruined the orchards, and in a great measure destroyed the buildings.

2d. Joseph Baldwin, a very loyal subject, was born and lived many years at Hempstead, in Queens County upon Long Island, where he enjoyed considerable property. About 15 years before the rebellion he removed and settled in Dutchess County, and left unsold a valuable lot of wood-land. The wood was all cut down and sold by a parcel of refugees under an order of the Court of Police, and the produce applied to their own use. The pretence was that the owner was a rebel. The proof, slender as it was, that he lived within the British lines. That he was no rebel, but a confirmed Loyalist, was a fact well known to the

refugees from that part of the province. He would willingly have repaired to, and joined the Royal army, but then he must have brought with him a wife and seven small children. These must either have starved or been supported by Government. His whole estate in Dutchess would have been seized, confiscated, and disposed of, for the use of the State. Let me ask whether this was not a cruel, an unjust and illegal act? No doubt it was. Yet though diametrically opposite to law, justice, equity, reason, and common sense, the Court of Police without a blush, at the request of the manager of rebel estates, gave the infamous order.

3d. Daniel Pine of Hempstead, a worthy loyal subject, who, during his life opposed the rebellion in all its stages, died during the war, and by will devised a valuable farm upon which he lived to two nephews, (both infants). They were born, ever lived, and then resided at the Fishkills in Dutchess County, of course not within the British lines; for which they were deemed rebels, the estate seized upon, given to refugees, who injured the house, sold the wood, burnt the fences, and ruined the farm. This was in consequence of a judgment given by the Court of Police, by the Governor's order, upon the application of Livingston.

4th. Thomas Jackson was a rebel, he lived upon a farm of his father's in the township of Oyster Bay. He left the Island with the rebels. The father was an old Quaker, about 70 years of age, and a loyal subject. Yet, because the son lived upon the farm when the rebellion commenced, and was himself a rebel, the estate was seized upon, refugees put upon it, the wood cut down and sold, and the same possessed by them until the evacuation of New York in 1783. All this was done by an order from a Court of Police. The old

man proved the farm to be his, and his son a mere tenant at will; yet, no redress could be obtained, though he solicited hard, and proved himself a Loyalist.

5th. Henry Holland, Esq., a gentleman of nearly 80 years of age, of one of the first families in the province,<sup>1</sup> a Master of his Majesty's Court of Chancery, and a very loyal subject, upon the capture of New York by the rebel army, in February, 1776, and its conversion into a rebel garrison, retired into the country, as almost every Loyalist did, and shortly after, both he and his wife died, leaving only two female grandchildren, both infants, his co-heiresses. He died seized of several houses in New York, to which the little girls by law were entitled. They were all seized upon, however, as rebel property, because Mr. Holland died out of the British lines, rented out at a high price, and the annual income paid (by order from the Court of Police) into the city funds. The infants, after the death of their grandfather, were maintained by strangers at a place called the English Neighbourhood, in New Jersey, about 20 miles from New York. Was this just, honest, right, or equitable? General Robertson as Governor was Chancellor of the province. Why did he not send out a flag and demand the little children? He knew the situation they were in. He knew as well the large property they had in the city.

<sup>1</sup> His father was from Ireland, and was Captain of one of the independent companies in New York, during his life. He left three sons, Edward, Henry, and Hitchin. Edward was many years Mayor of Albany; afterwards Mayor of New York, and one of his Majesty's Council. Of these honours he died in full possession. Henry served a number of years as high Sheriff of the County of Albany, and was, when the rebellion broke out, a Master in the Court of Chancery. Hitchin died a Lieutenant in one of the New York independent companies. The male issue of this family are now extinct.

He knew also how it was appropriated. It was his duty to have demanded them, to have appointed them a guardian, and put into his hands all the estate of which Mr. Holland died seized for the use, benefit, and advantage of the two infants. He should also have ordered the Chamberlain, the Treasurer of the city funds, to have paid to such guardian for the use of the orphans every farthing that he had received for the rents of Mr. Holland's houses. As Chancellor of the province, he had it in his power to have done all this. As Chancellor it was his duty so to have done; and as Chancellor, law, equity, and common justice required it at his hands. Let my readers consider, for one moment, two infants, poor, harmless, female infants, despoiled of their property to serve the pecuniary purposes of a few peculating individuals, and Nature must shudder at the thought. Yet it seems to have given the Governor, his Manager of rebel estates, and the Court of Police, not the least concern whatever. These infants never got the possession of their houses until the evacuation of New York in November, 1783, and as to the rents, they never got a farthing. The city funds had been appropriated to a different use. The rents must have amounted to a considerable sum, as house rent during the war was high, and the houses were occupied, and rent regularly paid for each, from September, 1776, to November, 1783, a term of seven years.

6th. Samuel Jones, Esq., prior to the surrender of Long Island, prior to the establishment of a Court of Police, and prior to the time from which such courts were authorized to take cognizance of causes, disputes, and controversies, made a legal entry into, and took the possession of, a farm under mortgage to him for a

considerable sum of money. The mortgagor was a rebel, and went off with Washington's army, and although the mortgagee had been in full, quiet, and peaceable possession from August, 1776, until May, 1781, five years and ten months, and had made large improvements upon the place, yet he was by the orders of the Governor, upon the complaint of Livingston, and by the judgment of Ludlow, turned out of possession, with a wife, a number of young children, and a parcel of servants. The mortgagee, though not called in, hearing what the Court of Police was about, applied to the court and offered to prove that the mortgagor was fully pardoned by the Commissioners' proclamation of October, 1778, and of course his estate could not be deemed rebel property. But Ludlow, the Judge, refused to let him go into such proof. Was not such refusal a manifest breach of the public faith, pledged by the Commissioners to his Majesty's deluded subjects by the proclamation aforesaid?<sup>1</sup> It must be observed that the mortgagee was in possession. That he stood in the place of the mortgagor. That the Crown was at any rate entitled to nothing more than an equity of redemption in the premises, and that by law could not be touched until the mortgagor was first *legally* convicted of, or attainted for his treason, and

<sup>1</sup> The proclamation contains these words: "We hereby grant and proclaim a pardon of all treasons and to all persons, &c., within the several Colonies of New Hampshire, &c., of all treasons, &c., committed, commanded, or done on or before the date hereof. And we further declare that if any person or persons, &c., in the several Colonies, &c., now actually serving in a civil or military capacity shall at any time during the continuance of this proclamation withdraw himself or themselves from such service and demean themselves peaceably, as faithful subjects ought to do, such persons should be fully entitled to all the benefits of the pardon hereby granted, excepting such persons only, who after the date of this proclamation shall, under pretext of authority, as judges, &c., be instrumental in putting to death any of his Majesty's subjects within said Colonies." This proclamation is dated the 3d of October, 1778.

not even then without paying off all mortgages, judgments, or other equitable demands to which the same was subject. This, I am told, was originally the law of the land. A Court of Police, however, decreed otherwise, and such decree being irreversible, the mortgagee was turned out of possession, his debt unpaid, and a refugee substituted in his place. It must be also observed that all the Courts of Police at that time established within the British lines were restricted and confined in their power to the 1st day of May, 1777. In those courts legal, honest, and just debts which became due prior to that day were irrecoverable, the reason given, was, *a want of power*. Yet in the present case a person who was in full possession by a *legal* entry, made in consequence of a *legal* title actually vested, the possession taken, the title vested, and the entry made prior to the 1st of May, 1777, yet the Long Island Court of Police took cognizance of this matter, turned the *legal* owner out of possession, and gave the same to a person who had no more right to it than the man in the moon. Was not a proceeding of this kind manifest injustice? was it not diametrically opposite and repugnant to the laws of England? and was it not a direct violation of that power under which the Courts of Police derived their authority? It certainly was; but Robertson would have it so, and Ludlow at the head of the Long Island police humoured him by carrying the illegal act into execution.

7th. Thomas Jones, Esq., one of the Judges of the Supreme Court, prior to the surrender of the Island, prior to the establishment of a Court of Police, and prior to the 1st of May, 1777, made a *legal* entry into a house and farm under mortgage to him for a considerable sum of money. By virtue of his entry he held

the possession until August, 1781, more than five years, and then leased it for a term of years. The legal and equitable demands of the mortgagee upon the estate were as large, if not larger, than the real value of the premises. The annual interest of the debt amounted to more than the farm annually rented for. The mortgage was, therefore, constantly accumulating, while the security was every year diminishing in value. The mortgagee, by virtue of his entry and his tenant under him, continued in the quiet possession of the premises for more than five years, about eighteen months of which was after Robertson assumed the reins of government. But the mortgagee being obliged to go to England in the spring of 1781, for the recovery of his health, no sooner was he gone than the Manager of rebel estates, by the directions of Robertson and the order of Ludlow, commanded the tenant peremptorily to pay the rent into the city funds in defiance of his lease, and in opposition to all the dictates of common justice, of reason, or of law, or in default thereof, to have his possession taken from him, and another tenant put in his place. Ludlow, in his decision upon the case, declared it as *good law*, that the King became seized, *ipso facto*, upon the British army taking possession of Long Island, of all the rebel estates thereon, and that the entry of the mortgagee was an *intrusion* upon the land of the Crown, and he liable to be punished by an action in the King's name for such intrusion.

I have been told that when the King once grants away the Crown lands he cannot be reseized again upon a forfeiture for treason, without an attainder by an act of Parliament, or a legal conviction in a court of law, and in neither case can the lands be disposed

of by the Crown without first discharging all legal encumbrances thereon. The mortgagee made it appear to the Governor, to Ludlow and Livingston, that his equitable demands upon the premises were equal to their full value. The mortgagor was only entitled to an equity of redemption; he could forfeit no more. The Crown upon an attainer, or a conviction, could be entitled to no more. Notwithstanding which, Robertson, Ludlow, and Livingston, seized upon the estate as the property of the Crown, and ousted the legal possessor by compelling his tenant to pay the rent into the city funds. Pray, was there ever such a stretch of power? such an exertion of injustice? A gentleman, a Loyal subject, and a Crown Officer deprived of his property, and dispossessed of his estate without a trial, a jury, or a hearing, and that in his absence beyond sea. Lawyers tell me that the mortgagee by his entry gained a freehold, and that by *magna charta* no man can be disseized of his freehold without a *legal* trial by his peers in a *legal* court of law. If this is law, then Robertson in this case acted contrary to law. If this is law, then Ludlow advised measures repugnant to law. And if this is law, then Robertson, Ludlow, and Livingston, by compelling the tenant of the mortgagee to pay his rent into the city funds instead of paying it to the lessor, committed an act not only illegal, and despotic, but unjust, arbitrary, cruel, and oppressive. Robertson attempted to justify himself upon this ground. That if he permitted one person to hold a rebel estate under a mortgage not foreclosed, though the mortgagee had the possession, it would be making a precedent that all persons in similar circumstances would take the advantage of, which might materially diminish the annual income of the city

funds. His Excellency, therefore, determined to indulge no one for fear of the consequences which might attend so bad an example. At this very time, however, was Robertson in full receipt of the rents arising from Philip Livingston's house and farm upon Long Island, his still-house, and several dwelling houses in the city of New York, in virtue of a mortgage thereupon, though he never had the possession until the reduction of New York and Long Island by the Royal Army in 1776!

8th. John Willett, Esq., had a mortgage upon a lot of valuable wood land. The mortgagor, one Van Loo, went off with the rebel army. Permission was given to Colonel Hamilton, of the Queens County militia, a man of an opulent fortune, a supernumerary aid-de-camp to his excellency, (for which he received 10 shillings a day for doing nothing, with rations of all kinds for his family), to cut down the wood, carry it away, and sell it for his use. This was effectually done; not a tree was left, and the mortgaged premises sank by such means to a trifling value. The mortgagor was a noted old loyalist, nearly 80 years of age, and had on that account been, during the rebellion, four months a prisoner in Connecticut, a considerable time in Philadelphia, and some weeks in New York. But Robertson was no respecter of persons, and Hamilton was his friend, his countryman, his aid-de-camp.

9th. Robert G. Livingston had a large estate in Dutchess County, a house upon Long Island, and several houses in the city of New York. He took no part in the controversy, but remained in a state of neutrality upon his estate in Dutchess, which he had made his usual place of residence for some years before the rebellion. He was an old, infirm, gouty, man. But

the County of Dutchess was not within the British lines, and in that County Mr. Livingston lived. This, it seems, was sufficient proof of his being a rebel. His house and farm upon Long Island, and all his houses in New York, were seized upon as rebel property, rented, and the money paid into the city funds. This old gentleman had, at that very time, a son, a refugee, a lad of spirit, a captain in Arnold's corps. He repeatedly applied for the possession of the farm and houses, or that the rents might be paid to him for his father's use, but to no purpose. They were rented as rebel property until the evacuation of New York, and the rents paid every quarter into the city funds.

10th. John Sloss Hobart, and Thomas Grenal, many years before the rebellion, mortgaged a neck of land upon Long Island, called Eatons Neck, to James Jauncey, Esq., a noted loyalist,<sup>1</sup> for a considerable sum of money. Moses Franks, of London, a British subject, took a second mortgage from the same people, upon the same Neck, for a large sum of money which he had recovered from Grenal in an action at law. This was also prior to the rebellion. The mortgagors both entered into rebellion, and after the battle of Brookland, in August, 1776, abandoned the Neck, and went into New England. A number of refugees, shortly after, took possession of this Neck. They first settled of their own accord, without any permission whatever. When Robertson arrived as Civil Governor of the Province, they obtained an order from him to keep and hold the possession in spite of any claims

<sup>1</sup>He was, with three of his sons, many months in 1776, a prisoner in New England, and is included in the New York act of attainder of 1779, by which his whole real and personal estate is confiscated and himself proscribed.

whatever. The occupants, under this order, cut down, carried to New York, and sold for their benefit and advantage, large quantities of wood, by which means, in the estimation of most people, the estate became of less value than the sums due upon the two incumbrances. The land, by the destruction of the timber, was constantly decreasing in value, while the interest on the mortgages was annually increasing. Mr. Jauncey in person, and Mr. Franks, by attorney, repeatedly applied to be let into the possession. It was as repeatedly refused. They then applied to have the refugees restrained from cutting down, destroying, and selling the wood. This was also refused, Robertson publicly declaring that the refugees should not be turned off the Neck to please any persons whatever, saying at the same time, "if the poor fellows had not the liberty "of selling wood, how were they to subsist?" Had the Neck been under a mortgage to him, I fancy he would have spoken a different language. There were 20 refugees upon the Neck, and if what fame at the time said was true, each paid Robertson an annual sum for his possession.

11th. The City of New York was a Corporation in the Dutch times, and continued so from its conquest by General Nicolls in 1664. A new charter was granted by Governor Dongan. In 1730 they obtained their present charter from Governor Montgomery, which recites and confirms all their former charters and grants from the first settlement of the Colony down to that period. This last charter was confirmed by an act of Assembly, and that act solemnly ratified by the Crown. By this charter they were created a body corporate and politic, by the name, style, and title of "The "Mayor, Aldermen, and Commonalty of the City of

"New York,"<sup>1</sup> with large powers, privileges, and emoluments. The charter also contains a grant to them (as trustees for the use of the city) of several tracts of land, houses, markets, and ferriages, therein particularly specified, upon York Island, and Long Island, with all the vacant land upon York Island, containing a large quantity. The whole at the commencement of the rebellion brought in a revenue of not less than £8,000 a year. The corporation consisted of a Mayor, a Recorder, seven Aldermen, seven Common Council men, a Chamberlain, a Sheriff, a Town Clerk, and a Coroner. The Mayor had the nomination of a High Constable. The Mayor, Recorder, and Aldermen, were Justices of the Peace, and by the charter empowered to hold a court of record once a month, taking cognizance of all causes, real, personal, and mixed. They were also empowered to hold a Quarter Sessions four times a year for the trial of all criminal offences not capital. The Mayor, Recorder, and Aldermen, with the Common Council men, which met whenever the Mayor, or in his absence, the Recorder, thought proper, for the management of the Corporation revenues, and the internal civil police of the city.

Upon the Declaration of Independence by Congress, on the 4th of July, 1776, the Mayor's Court, the Quarter Sessions, and the Common Council all ceased. But why they were not all revived upon New York being taken possession of by the royal army, I never could, after all my inquiries, obtain a satisfactory reason. The Common Council especially, as they, by Charter, were intrusted with the management of the

<sup>1</sup> Since the recognition of American Independence by Great Britain, and the evacuation of New York in consequence, the Charter has been confirmed by an Act of the Legislature of the State of New York.

city revenues, the renting of the houses, lands, ferries, water lots, and markets, the property of the Corporation; with the receipt of all its rents, profits, and perquisites, and with the payment of all debts due from the Corporation. These debts, when the war commenced, amounted to about £10,000. This was not permitted, and why, let General Howe tell. Instead of the Common Council being permitted to take the direction of their own revenues, which they held, in right of their incorporation, as trustees for the benefit of the city, the law was declared by the military at an end, the inhabitants out of the King's peace, not even entitled to his protection, and their estates all forfeited. In consequence of this idle, silly, and preposterous doctrine, General Howe (with great generosity), in the winter of 1776, made a present (of what was none of his own), of all the profits arising from the ferries, markets, and slips, to David Matthews, Esq., the Mayor of the City, which he was pleased to accept of, and, in violation of that oath, which he had solemnly taken upon his appointment to the Mayoralty, to appropriate to his own use, what was not only the property of the city, but what he as Mayor and a trustee for the City was bound to protect, and see appropriated, according to the directions of the charter. Not content with General Howe's present, the Mayor ordered all the tenants of the Corporation to pay their rents to him, which he received without a blush, without shame, compunction, or remorse, and modestly appropriated the whole to his own use, until the arrival of Governor Robertson, in April, 1780. Finding then how these revenues were, and had been for several years past appropriated, his excellency thought it an object worthy his attention. It was a money mat-

ter, and Robertson loved cash. He therefore, by a public advertisement, ordered all the rents arising from the ferries, markets, slips, and houses, belonging to the Corporation, to be paid into the city funds, of which he appointed a treasurer, and to no other person or persons whatever, under pain of his displeasure. They were accordingly paid to this treasurer, and deposited among other public monies arising from private lotteries, made, as it was pretended, for the use of the poor, from an excise upon all retailers of strong liquors within the lines, and the rents of rebel houses and farms; and were drawn out and disposed of as his excellency and a few others in the secret thought proper.

It was often inquired, what right the Governor had to the reception and appropriation of the city revenues? The question should have been answered. It never was. When the revolted Colonies declared themselves independent of Great Britain, all government under the Crown ceased. The Mayor and Recorder, five Aldermen out of seven, six Common Council men out of the same number, the Chamberlain, High Sheriff, and High Constable, were strictly loyal. When the rebels abandoned, and the royal army took possession of the city, the Corporation consisted of the very same persons which formed it upon the Declaration of Independency. It could by no means be pretended that the Charter was forfeited. If it was, such forfeiture must have appeared by a regular judgment, fairly obtained upon a *legal* trial in a *legal* and *constitutional* court of law, and until such judgment was had, which never was the case, the law would of course declare, and adjudge, the Charter valid, unforfeited, and in full force. And I do aver that without

such a forfeiture, no person or persons, either civil or military, could dispossess the Corporation of their revenues, without infringing the rights of the British Constitution, the liberties of the subject, and the prerogatives of the Crown. Yet General Howe did this by giving the revenues to the Mayor, and yet did Governor Robertson do the same by dispossessing the Mayor thereof, ordering them paid into his own funds, and appropriating them to his own use, benefit, advantage, and pleasure. I say pleasure, because the little misses, and some married wantons, partook of the sweets of his excellency's City funds.

Some of the gentry who had a fellow-feeling with Robertson in the receipt and appropriation of the city revenues, openly avowed "that all law was at an "end, that the 'prohibitory act'<sup>1</sup> had taken away all "the liberties, privileges, and property ever granted "to the revolted Colonies, and that the whole was re- "vested in the Crown in consequence of that act. "That the inhabitants were out of the king's peace, "not under his protection, and that a restoration to "their former charters, grants, liberties, privileges, "and property, wholly depended upon the will and "pleasure of the Crown." This was the doctrine then advanced, and insisted upon, by Robertson. It was supported by his tools, Gabriel D. Ludlow, Philip John Livingston, and Samuel Bayard. If this was really the case, and the City Corporation deprived of their Charter and revenues, in consequence of the prohibitory

<sup>1</sup> An act of the British Parliament passed in December, 1775, "entitled an Act "to prohibit all trade and intercourse with the Colonies of New Hampshire, "Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Penn- "sylvania, the three lower counties on the Delaware, Maryland, Virginia, North "Carolina, South Carolina and Georgia during the continuance of the rebellion, "then subsisting within the said Colonies respectively."

act, pray did not the Chamber of Commerce, the Marine Society, the Episcopal Church in New York, and Kings College, lose theirs by the same act? If the prohibitory act put an end to one charter, surely it did so to another? Yet the Marine Society, the Chamber of Commerce, the Rector and Church Wardens of Trinity Church, and the Governors of Kings College, all corporate bodies, constantly and instantly, from the entry of the king's troops into the city in 1776, until the evacuation in 1783, exercised the powers, and enjoyed all the privileges granted them by their respective charters, with the full, complete, and undisturbed possession of all their revenues; nor was it ever suggested that their charters were either void, forfeited, or even suspended in consequence of that act. The Governors and Generals frequently applied to the Chamber of Commerce and Marine Society as public bodies, received addresses from them all in their political capacities, and gave answers to them as such. And here let me ask, from whence arose the distinction between the City Charter, and the Charters of Kings College, Trinity Church, the Marine Society, and the Chamber of Commerce, that the four last should be all good, the first void? The latter permitted to receive their revenues, and maintained in all their liberties, franchises, and privileges, the former robbed of her revenues and deprived of her privileges? Suppose General Howe had made the Mayor a present of the College revenues, will any man in his senses believe that the Governors would have submitted to the imposition, or suffered him to receive a farthing of their rents? I fancy not. Or even had Governor Robertson, by a law of his own, that is, a proclamation, ordered all the College tenants, mortgagors and

debtors, as he did those of the City Corporation, to have paid in their respective debts to the Treasurer of his City funds, would the Governors have acquiesced in such a measure? I fancy not.

The Mayor, after possession of the City by the royal army, always sat, and acted in the College Corporation, being by his office one of the Governors, and never made the least objection to the validity of the Charter. He ought to have pointed out (if he could), to the satisfaction of the city, the reasons which suspended, or forfeited the City Charter, while they had no effect upon those of the College, and the Marine Society, of each of which he was a member.

The Lieut.-Governor, the Chief Justice, the puisne Judges of the Supreme Court, and the Attorney-General, were all Governors of the College. They sat and acted as such, convinced of their charters being in full force. Yet the Mayor, General Howe, and Governor Robertson, for the sake of the revenues declared the City Charter void. The same reasoning will hold good with respect to the Corporation of Trinity Church, all the privileges and emoluments granted by their charter ceased upon the rebel declaration of Independence, the revenues were sequestered, the church was shut up, a usurpation instead of the old Government took place. It continued till the Royal army entered New York, when the new Government ceased, the church was opened, the Rector and Church Wardens immediately revested themselves with all their former franchises, and possessed themselves of all the revenues belonging to the church. The right so to do was never disputed. Not a word was heard about a suspension, a lapse, or a forfeiture. The pro-

hibitory act was not even mentioned upon the occasion. Nor did General Howe, or the Mayor, then, or Robertson, Ludlow, Livingston, or Bayard, ever, suggest a hint that the revenues of this Corporation ought to be received by the Treasurer of, and lodged in, the city funds. And here let it be again asked, what was it that forfeited or suspended the City Charter, and left the others in full force. They were all in the same predicament exactly. I fancy the most positive order, the most pointed advertisement, or the most threatening proclamation, of General Robertson, would not have compelled the Rector, &c., of Trinity Church to have relinquished their privileges, or given up the revenues for the sake of a Governor, a General, or the city funds, and yet, most certainly, Robertson had as good a right to seize upon the Church revenues as he had upon those of the City Corporation. Nor do I imagine, had a General made a present of the church revenues to the Rector, that he would have availed himself of such gift, in violation of his oath, his conscience, and his religion. Yet we have seen a Mayor, the Chief Magistrate, the head of the City Corporation, in defiance of his oath, his conscience, and his religion, availing himself of such illegal gift, and deliberately pocketing to his own use, those revenues which he had often sworn to protect, and manage for the use of the city ; and afterwards looked on, and passively saw those very revenues (the property of the city) paid into certain funds by the orders of an old avaricious Scotch Governor, and appropriated to uses, very different from the design of the Royal grant, without ever opening his lips, or remonstrating against the damnable, iniquitous, unrighteous act.

If, instead of only four, out of the nineteen members, of which the City Corporation consisted, every member had been a rebel, would this have forfeited their charter? I am told it would not. It would, upon a conviction in a Court of Record, or an attainer by an act of Parliament, or of the Legislature of the province, have affected their own private estates as individuals, but the revenues of the Corporation which they held in right of the city (as Trustees) in their political, not in their civil capacities (as natural persons) could never be affected by such rebellion or any treason of theirs. What right then had General Howe to give these revenues away? What right had the Mayor, of all the people in the world, to accept of such presents and appropriate them to his own use? Or what right had Governor Robertson afterwards, to sequester these revenues, take them from the Mayor in spite of General Howe's gift, and order them paid into a fund of his own forming, and of which he was one of the principal appropriators? It was given out that this fund was established for the use of the refugees, and all the money there lodged, distributed properly among them according to their respective situations. That this was only a pretence, the following anecdote will show: Thomas Nowlan, Governor Robertson's gardener, was paid out of this fund, his annual wages of eighty pounds. The warrants for this purpose were drawn, and signed, by the Governor, suggesting that Nowlan was a refugee, and the money to be paid to him as such, though he had lived in New York above thirty years, and was never out of the British lines during the whole rebellion.

When the Royal army took possession of New

York, the Corporation Chamberlain was with them,<sup>1</sup> he was chosen by the Corporation, his business was the reception of their revenues, and the appropriation of them according to the directions of the Common Council. For the faithful discharge of his duty, he not only gave ample security, but was under oath. It was this gentleman's business, it was his duty, and I am sure it was his inclination, to have continued in the receipt of the revenues for the use of the Corporation. He was then upon the spot, why then did General Howe undertake the disposal of them? The Mayor knew this. Why then did he receive and appropriate to his own use, as a present from General Howe, the revenue of that Corporation of which he was the head? of that city of which he was the Chief Magistrate? His own understanding, superficial as it was, must have told him that General Howe had no right to give away the city revenues. He might with as much propriety have given away Long Island, York Island, or Staten Island; nay, he might even have presented Mrs. Loring with Rhode Island.

That Robertson, upon his appointment to the government, finding in what manner the revenues of the Corporation were applied, had a right to dispossess the then receiver is beyond a doubt. But when he had

<sup>1</sup> John Harris Cruger, Esq., and at the time, also, one of his Majesty's Council, for the province. The ancestor of the family was a Dane; he came to, and settled at New York, where he was naturalized. He bore a fair character and carried on an extensive trade. He was many years Mayor of the city. He left two sons, Henry and John. Henry was many years a member of the Assembly, afterwards a member of his Majesty's Council, and so continued until the rebellion broke out. John was for many years Mayor of New York, a member of the Assembly, and Speaker of the House. When the war commenced, Henry left four sons, the above named John Harris Cruger, Henry Cruger who served as Sheriff, Mayor, and Member for Bristol in two Parliaments, Tileman and Nicholas, who both married and settled in the West Indies, the one at Curacao, the other at Santa Cruz.

done this, what should have been his future conduct? Not to have placed them in the city funds to be disposed of, and appropriated in such manner, and to such uses as himself and company thought proper. On the contrary, it would have been just, honest, and equitable, to have ordered the Mayor to call a Common Council, and they to appoint a proper person, under proper regulations, to receive the revenues in the absence of the Chamberlain, (then and from the landing of the King's troops upon Long Island in August, 1776, an officer in his Majesty's service, and then with his battalion in South Carolina<sup>1</sup>) to liquidate the several debts due from the Corporation upon simple contract; to have discharged the same; to have paid off their bonds and specialties, then due to a number of poor loyal subjects within the lines, who had been reduced, many of them, from affluence to poverty in consequence of the rebellion; and to have appropriated the remainder to the benefit and advantage of the Corporation. This would have been acting a just, an honest, a reasonable, an equitable, and a right conduct. But to act the direct reverse was unjust, dishonest, unreasonable, inequitable, and unrighteous; nor can an honest man or a Christian justify so villainous a transaction.

Many of the Corporation creditors would have been happy in these hard and trying times to have had their demands, their legal and just demands, discharged. The annual revenues which arose during the course of the war would have been more than sufficient had they been properly appropriated. But the griping hand of avarice prevented so laudable and praiseworthy an act.

Many instances might be produced of the extreme hardships, which numbers of the Corporation creditors

<sup>1</sup> He was Lieutenant-Colonel of the First Battalion of DeLancey's Brigade.

suffered by the misapplication and sequestration of the revenues. An enumeration of a few shall suffice. It has been already mentioned that Colonel Cruger was their Chamberlain. Upon the declaration of independence by the rebels there was due to this gentleman, for his salary, and monies advanced for the use, and upon the credit, of the Corporation, about £1,700. Upon this sum he was equitably entitled to interest. The money has never been paid. This fact was well known to the whole Corporation, particularly so to the Mayor, and though well known by him to be a just and honest debt, while in receipt of the Corporation revenues, appropriating them to his own use and rioting upon the property of its creditors, he never took a single step towards its discharge; and, I am sorry to add, that while this same Mayor was revelling in New York, immersed in dissipation, living upon the spoils of the Corporation, and with his family pampering and wallowing in every kind of luxury that the city could afford, money procure, or power exact; and while Colonel Cruger was exposing himself in his Majesty's service, to the fatigues of the field, the dangers of the war, and an unhealthy climate, his lady for a considerable time was obliged to live within the lines at New York, supported, in a great measure, by her friends and relations. Was there ever such an instance of inhumanity, of ungenerosity, or of unkindness? But humanity, kindness, and generosity were virtues unknown to the hardened hearts and contaminated souls of Robertson, Matthews, and company.

The Corporation owed John Shoals, of Newtown, in Queens County, on Long Island (as worthy, as honest, and as steady a Loyalist as ever existed), £1,000 upon bond with interest during the war, more than eight

years. He was so obnoxious to the rebel powers on account of his loyalty, that he was obliged upon the evacuation of New York to remove with his family to Nova Scotia. The Corporation upon the peace was new modelled. The Charter, which was before held under the Crown, was now repealed and established by an act of the new-fangled Legislature. This sum of money poor Shoals has absolutely lost. Had the revenues of the Corporation been as properly applied, as actually received, during the war, the whole of this debt would have been saved to the obligee. In consequence of the same measures, Miss Middleton, an infant, the only child of the late Dr. Middleton, a person remarkable for his loyalty, lost £1,500 due upon bond, with the interest, which became annually due during the whole of the rebellion. The Corporation being new modelled, they declared that no old debts should be paid, that the former Corporation was held under a grant from the Crown, the present under an act of Assembly, that the new Corporation had nothing to do with the transactions of the former, nor would they pay a single debt contracted by them. To enumerate instances of this kind is needless; suffice it, therefore, only to say that every creditor of the old Corporation was put in the same predicament and suffered in the same manner. When Independency was declared the City Corporation owed at least £10,000. This sum is totally lost to bona fide creditors by the repudiation of the new Corporation, with the immaculate James Duane, Esq., at their head.

12th. Benjamin Helme, Esq., a gentleman of the law, a noted Loyalist, resided during the war at Burlington, in New Jersey, where his wife's relations lived. He had several houses in New York. In 1780, with permission,

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he left Jersey and went to New York. He found all his houses occupied as rebel property. He applied to the Governor for the possession, and an order for the payment of the back rents. The memorial was referred to the Mayor. A near relation of his Worship's occupied one of the houses; poor Helme was of course reported a rebel, nor was he ever able to obtain either the possession of his houses, or the payment of his rents until the evacuation of New York, in consequence of Lord Shelburne's peace. Helme staid in New York vainly soliciting the General, the Governor, and the Mayor, for the possession of his property until he had spent what money he had, and then retired in disgust to the rebel country and accepted of a protection from traitors, which he was unable to obtain from the servants of his lawful Sovereign. Let it be here asked, and let Clinton, Matthews, Robertson, and Ludlow, answer the questions: Was not Helme a Loyalist? Had he ever been a rebel? Was he not fully pardoned by the Commissioners' proclamation of the 3d of October, 1778? And whether the refusal of the General, the Governor, and the Mayor, to give him the possession of his property, was not only a manifest breach, and a notorious violation, of the public faith pledged by that proclamation, but a forfeiture through their means of the words, honours, and faith, of the Commissioners, and disgraceful to the Legislature of Great Britain by whom they were empowered?

13th. Cornelia Ball, an honest, old, Loyal, widow, nearly seventy years of age, whose husband died near twenty years before the rebellion, and who by his will devised "all the rents, issues, and profits, of his real "estate to her during her natural life." He had several houses in New York. In February, 1776, the city

was taken possession of by the rebels, and converted into a garrison. Upon this, the old woman removed into the country. When the King's troops got possession of New York, in September, 1776, she applied for leave to return, in order to take care of her property. It had no effect. The rebels made a rule to grant no favours to Loyalists, whether women, children, or orphans. In May, 1781, she escaped from the rebel country and got into New York. She was, by her husband's will, entitled to the rents of three houses. She found them all occupied. The payment of the back rents she applied for, and a promise to pay the ensuing ones to her in future. The tenants took no notice of the application. She then applied to the Police Court, but got no satisfaction. She then applied to the Governor; he referred her to the Police Court. She had been there before to no purpose. She was advised to apply to the General; she did so. He told her to go to the Governor; she had before been there without success. What steps were now to be taken was the question. Her friends advised her to petition the Commissioners for restoring peace. The General, who was at the head of the Board, refused to receive the petition. She then went to Admiral Arbuthnot; he advised her to show the will to the Mayor, and no doubt she would obtain justice. She pursued the Admiral's advice; but to no purpose. The Mayor declared she had no right in the houses. She then consulted the Chief Justice, one of the puisne Judges, and the Attorney General. They all gave their opinion in her favour. The statement of her case, and the several opinions annexed, she showed to the Mayor. He was then in the Court of Police, sitting upon the seat of justice. He read the case and opinions, this

done, he swore, he cursed, and then exclaimed, "she had no right, by God; nor shall she have the possession of her houses. Her son is a rebel, and that is enough for us." What a judge! What a lawyer! He was perfectly accomplished for a Court of Police Judge. He would sacrifice heaven, and hell, his God, his conscience, and his King, to serve the wicked, avaricious, purposes of an old Scotch Governor.

14th. Andrew Gautier, many years an Alderman of New York, an absolute Loyalist, died in July, 1776. He devised a large real estate in the city to his two sons as tenants in common in fee. The eldest son, some years prior to the rebellion, married in the country, where he had constantly lived with his wife's relations. The youngest son was perfectly loyal. Upon the conquest of New York by the royal army, he took possession of his father's real estate, being equally entitled with his brother, as tenants in common. He had, upon the arrival of the King's troops at Staten Island, taken refuge there, and with them entered the city, and as already mentioned, took possession of his estate. The eldest brother lived out of the lines, he was therefore called a rebel. Upon Robertson's arrival as civil Governor of New York, the whole estate was seized upon as rebel property. The youngest son, though never even suspected of disloyalty, was turned out of possession, the houses rented by the Governor's orders, and the rents also, by his order, paid into the city funds. Was not this evident, apparent, and manifest injustice? This was the consequence of the abolition of civil law, of shutting up the Courts of Justice, and placing all power and authority in a Police Court established by the military.

15th. John Thurman, a wealthy merchant, of un-

shaken loyalty, prior to the rebellion, purchased and settled upon, a large tract of land in the county of Albany. Upon refusing to take the oath of allegiance to the States, he was taken up, his estate sequestered, and himself transported as a malignant, and banished to New York. Thurman had several houses in New York; he found them all occupied, he applied for the possession. This was refused. He applied for the back rents. This was refused. He applied for the payment of the rents to him in future. This was also refused. His applications were made to the General, to the Governor, to the Commandant of the city, to the Mayor, to the Court of Police; they were all equally fruitless, no redress was to be had. Thurman's case was now deplorable, his situation really to be pitied. He was banished by the rebels on account of his loyalty, and his property in the country was sequestered. At New York he was driven about from pillar to post, was refused the possession of his houses, the payment of his rents, and even insulted, abused, and cursed, by those very people whose duty it was to have seen justice done to his Majesty's loyal, persecuted, subjects. Thurman, finding that his mansion, an elegant building, was out of repair, took a carpenter, went to the house, showed him what was wanting, and ordered the necessary repairs. This the possessor, one De Blois, a fiddling refugee from Boston, took in dudgeon. Some warm words arose. Thurman was ordered out of the house. He refused to go. De Blois complained to the Commandant of the city, who ordered an officer with a guard of soldiers to seize Thurman and lodge him in the *prevost*. This was done. Thurman was paraded through the streets like a felon, and confined for many days in prison

among traitors, deserters, and rebels. No habeas corpus could be had. Law was gone, justice banished, and equity fled. Thus were his Majesty's loyal subjects, within the British lines at New York, treated by the military during the war. I shall now quit this disagreeable subject, but such were the times, that justice obliges me to proceed upon another as disagreeable as the former.

## CHAPTER IV.

It must be remembered, that in Governor Robertson's order "to take possession of all the rebel estates "within the British lines, and accommodate the refugees "with them," there was an exception to the following purpose, "except such as should be wanted for the "particular use and service of his Majesty's army." Any person with half an eye can see to what this exception referred, and what was the plain manifest intent and meaning of it, to wit, such as were necessary for barracks, hospitals, and store-houses. But observe from the following cases, what an odd kind of construction was put upon the exception, and how much his Majesty's gracious intentions in favour of his loyal refugee subjects, (if such an order Robertson ever had) were perverted by such construction by virtue of that exception, and the construction put upon it by the military, by the civil Governor, by the Mayor, by Livingston the Manager of rebel estates, by Samuel Bayard the new-made Secretary, and by the Courts of Police.

1st. The General had one of the best houses in the city, and one of the genteest country-seats upon the Island, the rent of which was paid by the Crown. He

also occupied upon York Island two large farms with mansions, out-houses, and offices adequate ; had another at Jamaica, in Queens County ; a fourth in Kings, and a fifth upon Staten Island. These estates would have rented for about £2,000 a year.

2d. Commissary Wier, with £3 a day, £4,000 per annum, and the amazing profits arising from so lucrative an office, and the promise of a yearly pension of £500 after the war, during life, was indulged with a rebel house in the city worth £300 per annum, and a country-seat upon the Island, worth at least as much.

3d. Major Crosby, who was at the head of the Barrack Department, an employment extremely lucrative, equal if not superior to those of the Commissary, and Quarter-Master-General, had a rebel country-seat upon New York Island worth about £500 a year.

4th. Governor Robertson, with the perquisites of a regiment, the pay of a Lieut.-General, a salary of £2,000 per annum as civil Governor of the province, and the fees and profits arising from the emoluments of his Government, which he *made* to amount to at least £2,000 more, was a principal Manager of the city funds, a place lucrative enough for a person of an avaricious disposition, and not overburdened with honesty. Besides this, though an officer, a General, and a Governor, he was concerned during the whole war in a vendue house in New York under the firm of Mc-Adam, Rhinelander, & Company, was accommodated with a rebel house in the city worth about £300 a year, and a country-seat upon the Island, worth at least £500 per annum.

5th. General Birch, the Commandant of the city, enjoyed the house in town of Mr. Samuel Verplanck, for many years before the rebellion an unhappy lunatic.

He lived out of the lines, his estate was therefore deemed rebel property. The house would have rented for £300 a year. This money should have been applied to the maintenance of the wife and children of the unfortunate madman. The wife and children were within the lines, under the protection of Britain, and absolutely maintained at the expense of their friends and relations. The General had also a country seat upon York Island, (the property of a rebel) worth £500 per annum, and another at Hempstead, upon Long Island, of the yearly value of £250.

The particular circumstances relative to this last place require to be fully explained. It shall be done in a few words. Samuel Pintard, Esq., a native of New York, of an opulent and reputable family, at the commencement of the war in 1755, obtained a pair of colors in Shirley's regiment. Upon the reduction of Oswego, in 1756, he was taken prisoner, and sent with the rest of the garrison to England, where he obtained a Lieutenancy, and went with his regiment to Germany, where he signalized himself as a brave and gallant officer in several actions. At Minden, he was desperately wounded, and lay twelve hours upon the field of battle before it was discovered he was alive. He recovered from his wounds and served the remainder of the war with honour to himself, and credit to his corps. Upon the conclusion of the war, the regiment was disbanded, upon which Mr. Pintard returned to New York, where he had a good estate, wealthy relations, and worthy connections. In a few years afterwards, he married a young lady of character, and fortune, and being fond of a domestic and retired life, was enjoying himself upon a small country-seat at a delightful little village in the county of Westchester, called New Ro-

chelle,<sup>1</sup> situate upon the Sound, when the royal army landed upon Long Island. The county of Westchester being then covered with rebel troops, there was no possibility of his joining the British troops, or getting to Long Island, the whole coast being covered with rebel forces. As soon as General Howe landed upon Pell's Neck, in the vicinity of New Rochelle, Mr. Pintard clothed himself in his regimentals, put on his sword, and with his firelock upon his shoulder, joined the army, and served as a volunteer during its stay in that county. I am now sorry to relate a fact, so far beneath the dignity, the honour, the spirit, the virtue, and so degrading to the character, of Englishmen, that I wish, (from my soul I wish) a veil could be drawn over the felonious act, and the whole transaction hid in impenetrable darkness. But it is a fact, and a fact that can be fully proved. It shall therefore be exposed to the view of the public. While Mr. Pintard was acting as a volunteer in the royal army, serving as a guide, and risking his life in the field, and in all the dangers incident to war; at this very time, I aver it as a fact, his house and farm were plundered of their most valuable effects by a party of that army in which he was exposing his life as a Loyalist, a volunteer, a conductor, and a guide. His household furniture was taken from him, he was robbed of his plate, they stole his horses, and they killed his cattle, hogs, and

<sup>1</sup> From the place of that name in France, from which a number of Huguenots fled upon the repeal of the Edict of Nantes and the persecution of the Protestants in consequence thereof, and settled here. Most of the inhabitants are still French, and retain their old customs. They have a French minister, French schools, and in their families use the French language in common. They are all an honest, worthy, and industrious, set of people. They never swerved from their allegiance to their sovereign during the whole of the rebellion, for which most of them were great sufferers, and many totally ruined.

sheep, and carried off his poultry. When General Howe abandoned the county of Westchester, and returned to New York, Pintard was obliged to remove also. He had acted in the British army. This was well known to the rebels. It was dangerous staying behind. He might have been hanged, or at least, imprisoned during the war. He took the prudent part, and went to New York with the army. He complained to the General of the robbery. He obtained no redress. Finding living in New York extravagant, and being fond of retirement, he purchased a genteel snug house, and neat little farm, at Hempstead, in Queens County, upon Long Island, a most delightful village about twenty miles from New York, to which with his family he retired, in expectation of living there unmolested, and in peace and quietness.

In this retreat he had not been long, before the 17th Regiment of Light Dragoons took up their quarters in the town. These gentry soon became very troublesome. They were expert at plunder, and being encouraged by Colonel Birch, their commanding officer, nothing escaped their hands, and in the course of six weeks not a lamb, nor a calf, a duck, nor a goose, a turkey, a pig, nor a dunghill fowl, was to be seen in the town; nor a potato, a turnip, nor a cabbage, in the fields. Mr. Pintard, tired with this disagreeable scene, removed his furniture to the Rev. Mr. Cutting's, a relation of his, and the parson of the parish, locked up his house, removed to New York, and embarked for Madeira, where he had relations of property, fully determined not to return to New York till the end of the war. Pintard being gone, the house and farm unoccupied, and Birch commanding at Hempstead, he soon fixed his eyes upon this place. How to get the

possession was the difficulty. The house was locked up, the key was gone. Birch was not to be balked with small difficulties. He contrived to force open one of the windows, and creeping through, opened the doors, and took possession. This title was at best but a precarious one, a better was to be procured. *Birch goes to New York*, represents Pintard as a rebel, charges him with being in the service of Congress, and gone as an agent of theirs to Madeira, and applies for the house and farm as the property of a rebel. General Clinton never inquires into the truth of the matter, believes Birch, and gives him an order to take possession of the place, and hold it as rebel property for his own benefit and emolument. Birch had now a double title, a title obtained by a forcible entry, and that entry confirmed by an illegal, arbitrary, order of the Commander-in-Chief. Birch being thus established in the possession, sent his compliments to Mr. Cutting, and begged the use of Mr. Pintard's furniture, for a few days, until his own could be brought from New York. Mr. Cutting, not willing to disoblige so powerful a neighbor,<sup>1</sup> acquiesced, and delivered up the furniture, which the Colonel afterwards refused to return, claiming it as rebel property.

Mr. Pintard, after his purchase, erected the frame of a large barn, including stables and a coach-house, but had not laid the floors, boarded the sides, nor shingled the roof. It was, therefore, of no use to Birch. Where to get shingles and boards was the question. He made the proper inquiries, and found that a Mr. Hulet, who lived about five miles off, had a quantity of boards and

<sup>1</sup> The parsonage where Mr. Cutting lived and Mr. Pintard's farm joined each other.

shingles laid in for building a house, which he had deferred on account of the times. This information gained, a number of wagons escorted by a party of horse, were sent, and the materials brought away without leave or license, and the barn completed. Mr. Hulet, a noted Loyalist, applied for payment. He got none, was called a rebel, threatened with the prevost, and turned out of doors. This was the situation of his Majesty's loyal subjects within the British lines during the war. Deprived of their property at the caprice of the military, their lives and liberty under the same arbitrary power, law, justice, and equity denied them, the civil authority abolished, and the courts of justice shut up. Such were the steps taken by the military to "conciliate" the affections of his Majesty's deluded subjects, to "reclaim" the disaffected, and "bring in" the rebellious.

Birch, thus settled to his wish at Hempstead, cast his eyes upon a small building in the town called "The Cage," erected by the inhabitants to confine persons convicted of drunkenness, swearing, and petty larcenies, of which the Justices of the Peace had cognizance. This "Cage," the Colonel thought would do for a wash-house; he accordingly sent a messenger to Samuel Clowes, a Justice of the Peace who lived in the town, a gentleman of strict honour, great integrity, and unbounded Loyalty, for permission to take it away. The Justice told him it belonged to the town, and he could give no consent, without the approbation of the inhabitants, signified by a vote at a general town meeting. The messenger replied that Birch would have been glad of the Justice's consent, but whether he had it or not was very immaterial, "for the Cage he would 'have.'" He accordingly ordered it removed, fitted it

up, and instead of its original use, converted it into a wash-house.

In the summer of 1779, the 17th Light Dragoons, of which Birch was the Commander, were again in quarters at Hempstead. Three privates of the regiment committed a burglary (a crime of which, I am told, the civil law ousts the criminal of his clergy), by breaking open a dwelling-house in the night, and plundering it of several valuable effects. The family at length being awakened by the noise of the robbers, a skirmish ensued, and one of the soldiers was killed, the others escaped. But being known, and sworn to, by the person robbed, they were taken up and committed by the General. Civil law there was none, but as if bent upon not punishing, or even trying, a soldier for a capital theft committed upon a loyal American, a sworn and steady subject of his Sovereign, and perhaps, to insult and show the little regard he had for the country and its inhabitants, he discharged the criminals without the shadow of a trial. The dead man, however, was fairly tried, condemned, and sentenced to be hanged in chains. The sentence, I suppose, was confirmed by the Commander-in-Chief, as it was actually and really put in execution. Birch at the same time insultingly telling the country people to take notice, that the military had, in this case at least, done exemplary justice for a robbery committed by a soldier upon an inhabitant, and desired in future to be troubled with no further complaints.

In 1779, Birch sent a party to Secatogue, a village about twenty miles to the eastward of Hempstead, to pull down a Quaker meeting-house and bring away the materials. This was done, and the whole appropriated by Birch to his own use. The party on their

return, stopped at a house then belonging to Thomas Jones, Esq., at Fort Neck, called the refugee house, from his permitting several of these poor loyal people to live in it. As they were all men, they maintained, supported, and diverted themselves by fishing and fowling. The Dragoons very deliberately entered the house, pillaged it of the little furniture the poor loyal wretches had, took out all the sash windows, and carried the whole off with the rest of their plunder. Mr. Jones getting full evidence of this black transaction, wrote several letters to the Colonel upon the subject, but never received an answer. He also called a number of times at his house, but never was let in. As Hempstead was Mr. Jones's parish church, he had every Sunday the mortification to see the windows of his house fixed in a barn, which Birch had converted into a barrack. Mr. Jones was noted for his loyalty.

The same year he had the Presbyterian Meeting-house at Foster's Meadow, pulled down, the materials brought away, and converted to his own use. This village is about four miles to the westward of Hempstead. This sacred edifice was built by the villagers for the sake of divine worship. Every inhabitant in the place was remarkably loyal. A minister who had, prior to the rebellion, occasionally preached in it, was a rebel. This Birch made a pretence for robbing the loyal inhabitants of their church.

Another anecdote of this gentleman shall be mentioned, and I have done with him. A few weeks before the evacuation of New York, the Colonel sent out a party upon Hempstead Plains, an extensive common of sixteen miles in length, and six in width, belonging to the towns of Oyster Bay and Hempstead, and drove in about 2,000 sheep. He ordered them into a field,

and had all their ears cut off. This done, he gave notice to the farmers to come in, prove their property, and each man to take away his own; that he had taken this step for their interest, and to prevent their sheep falling into the hands of the rebels. The farmers were pleased, looked upon it as an act of kindness, and flocked into the town. Birch showed them the sheep, and desired each man to select his own, but if any one took a sheep which he could not swear to, or prove to be his property, he should be severely punished. All the cattle and sheep in Hempstead and Oyster Bay were marked in the ears, and nowhere else. Every farmer has a mark of his own, and each mark is upon the records of the town. Birch having taken the ears off of the sheep, not a single man was able to prove his property. Birch, therefore, sold the sheep, and by this piece of wickedness pocketed above £2,000.

6th. Brigadier-General Skinner, who commanded a Brigade, with the pay of a General, with all the emoluments of a Battalion, of which he was the Colonel, had a rebel house and farm upon Long Island worth £400 a year, and another upon Staten Island worth about £200, and rations, besides, of all kinds for himself, and a large family.

7th. Colonel Ludlow, of the 3d Battalion of De Lancey's Brigade, with all the perquisites thereto belonging, though he had a genteel country-seat and farm of his own in Queens County, had a rebel farm given him at Jamaica, which rented for £300 a year during the war.

8th. Lieutenant-Colonel Stephen De Lancey, was accommodated with a rebel estate at Newtown, upon Long Island, worth £400 a year.

9th. Philip John Livingston, had a farm and house at

the same place, worth annually as much. He had also a pension of £200 sterling a year, as "Superintendent "of rebel estates."

10th. Charles McEvers, had a tract of wood-land given him worth £150 a year. From this land he got all his fuel. The owner was without the lines, his property was, therefore, deemed that of a rebel. Besides this, Mr. McEvers had a salary of £200 sterling per annum as Treasurer of the Long Island Court of Police, and rations of all kinds, for himself, his horses, and family.

There were also a number of houses in the city of New York, which would have rented for at least £1,000 a year, the property of persons out of the lines, which were occupied by a pack of dirty, idle, thieving negroes, invited into the lines by a proclamation of General Clinton, promising them protection and maintenance. These wretches were supplied with rations of all kinds, equally with the King's troops. They consisted of at least 2,000 men, women, and children, in all probability, the greatest part of them the property of Loyalists. Perhaps the Commander-in-Chief, the Civil Governor, and Birch, who was the Commandant of the city, looked upon the black runaways as coming under the description "of his Majesty's "loyal and faithful refugee subjects," mentioned in the royal order for the appropriation of rebel estates, which Robinson received, or pretended to receive, as mentioned before, upon his appointment to the Government.

Had the several houses and farms above mentioned been hired out for the benefit of the refugees, and the rents arising therefrom properly appropriated, agreeably to the royal mandate, an annual sum would have been produced of at least £10,000; a sum more than

sufficient to have comfortably maintained all the poor, distressed, refugees within the British lines. Yet this sum was a dead loss to government, by as stupid and absurd, though perhaps wilful and designed, a construction of the royal order, as ever was invented, thought of, or conceived.

It must be observed that by the order, "all the rebel estates within the British lines were to be taken possession of, and appropriated to the use of his Majesty's loyal refugee subjects, such only excepted as should be wanted for his Majesty's service." That the words "*Majesty's service*," in Robertson's order, meant nothing more, than such as should be wanted for hospitals, barracks, prisons, store-houses, and work-shops, and not such as should be wanted for the luxury, ease, pleasure, and dissipation of the field officers of his Majesty's army, is evident. Such a construction as the latter would be an absurdity; a disinterested man of the meanest capacity would laugh at it; nay, a schoolboy silly enough to draw such a conclusion from the words of the order, ought to be well flogged. Whatever the royal order really meant, it certainly never intended that houses, the property of his Majesty's loyal subjects, should be appropriated to such a use. The words are plain, perfectly intelligible, and easily understood, "all rebel estates, except such as are wanted for his Majesty's service." This service was first to be provided for out of rebel estates, and such as were not wanted for this use were to be applied to the benefit of the refugees. The estates of loyal subjects were not to be meddled with, nor converted into barracks, store-houses, nor hospitals, as long as there were rebel houses within the lines sufficient for the purpose. There were, at this time within the lines, rebel houses more than sufficient

to have answered the purpose, and a large number still left for the use of the refugees. Yet, more than 300 buildings, consisting of public, and sacred edifices, brew-houses, dwelling-houses, the college, barns, store-houses, and stables, belonging to his Majesty's loyal subjects were, during the whole course of the rebellion, occupied by his Majesty's army for the uses aforesaid, while rebel houses and estates, more than sufficient, and extremely proper for such purposes, were appropriated for the ease, pleasure, diversion, and emolument of the military, given away to favourites, or hired out for the use of the city funds; and though applications were frequently, and repeatedly, made by the proprietors to Generals, Governors, Barrack-masters, Quarter-masters, Commissaries, the Mayor, and the Courts of Police, for the possession of these buildings, or at least the payment of rent, yet no redress ever could be obtained. The proper departments, no doubt, regularly charged in their accounts with Government all these buildings as hired for the use of the Crown. And that the nation paid for them as such, there can also be no doubt; the proprietors, however, never got the money. The question then is, who did? The answer, I believe, is very simple, Quarter-masters, Barrack-masters, and Commissaries.

One particular instance, arising from this conduct and behaviour in the military, shall be here related. The case was a hard one, but Barrack-masters had no bowels of compassion. Nicholas Gouverneur, Esq., a gentleman of noted loyalty, good character, and a moderate fortune, retired from New York, some years before the rebellion, and settled upon the Passaic, in New Jersey, and built a genteel house upon a small farm that he had purchased. He had several houses

and store-houses in New York; the dwelling-houses he was permitted to hire out for his own emolument, the store-houses were occupied for the use of the Crown. Being indebted to a Mrs. Kearney in a considerable sum of money, a widow lady of figure, character, and reputation in New Jersey,<sup>1</sup> a refugee in New York, by the rebellion reduced from affluence to almost indigence, she was banished from New Jersey, and her estate seized upon. She was, of course, obliged to live in the most parsimonious manner. In this situation she applied to Mr. Gouverneur for the payment of his bond. He was an honest man. He gave her an order to receive the rents of his store-houses, many years occupied by the Crown for the use of the army. With this order she applied to General Clinton, to the Commandant of the City, to the Civil Governor of the Province, to the Barrack-master, to the Quarter-master, to the Mayor, to the Court of Police, with petitions, memorials, and remonstrances, that would have melted a heart of stone, without the least effect. The General sent her to the Governor, he to the Commandant of the City, the Commandant to the Quarter-master, the Quarter-master to the Barrack-master, and the Barrack-master back again to the Commander-in-Chief. Here the farce ended, or it must have been played over again to little purpose. Mrs. Kearney was at this time in want, in distress, and indigence, nay, in a starving condition. Thus reduced by the cruel, unrelenting hands of persecuting rebels, she was obliged to apply to Mr. Gouverneur for the payment of what he

<sup>1</sup> Her late husband was a man of property in that Colony, and of eminence as an attorney and counsellor-at-law. Her father was for a number of years, and to the time of his death, Chief Justice of the Province. His name, Robert Lettice Hooper, a native of the Island of Barbadoes. His descendants are people of consequence in New Jersey to this day.

owed her. Gouverneur was a loyal subject, the store-houses were his property, they were occupied by the army, and appropriated to the use of the Crown. Mrs. Kearney had an order from the proprietor for the receipt of the rents in order to discharge an honest, just, debt; yet, neither Mr. Gouverneur, nor Mrs. Kearney could ever get a farthing of them. Who did? the Barrack-master can best tell. However, no great conjuration is required to guess to whom John Bull paid the money. The rents of all the houses occupied by the army, were charged to government, and paid by the nation.

## CHAPTER V.

A FEW instances shall now be adduced, in which his Majesty's loyal subjects were deprived of their liberty, illegally tried, unjustly punished, or cruelly treated, by his Majesty's military during the rebellion. The case of John Thurman has been mentioned, and an extraordinary, arbitrary, illegal, one it was.

A Mr. Hulens, a loyal refugee from New Jersey, a gentleman of character, fortune, and reputation, having dined in company at a public house, and spent the day rather jovially with other subjects as loyal as himself, a person, in the evening, observed that the Town Major was come into the house. Hulens exclaimed, "damn 'the Town Major, what have we to do with him?" There was no great harm in this. It was not treason, it was not felony, nor was it a breach of the peace. Hulens was overheard by the Town Major, and he swore not to forget nor forgive the offence. A complaint was lodged, Hulens taken up, carried to the prevost, confined several days, with vagabonds, felons, and deserters, and not discharged until he had asked pardon of the complainant. Thus was a refugee, a Loyalist, a person of character, an opulent merchant before the war, and a gentleman who had for several years represent-

ed the city of Burlington in the General Assembly of New Jersey, used, for no other cause than that of "damning a Town Major." No redress was to be had. None could be got from the military; the act was theirs. None could be obtained from the civil law; the courts of Justice were shut up. None could be procured from the Courts of Police; they derived their authority from the military, and ever refused to act upon, or take cognizance of, a complaint in which an officer, a dependent on, or even a follower of, or a sutler in, the army was concerned.

James De Lancey, junior, Esq., a gentleman of great good nature, and amiable disposition, and his brother Oliver De Lancey, junior, both private gentlemen, sons of the late Peter De Lancey, of Westchester, had some words with Colonel Emerick, a German, who commanded a company of chasseurs at Kingsbridge. Mutual aggravations passed, and from words, blows ensued. The spectators interfered, an end was put to the quarrel, and the two young gentlemen returned home, about two miles distant "from the field of battle." Emerick complained of the insult. The young gentlemen were seized upon at their mother's house, Rosehill, Westchester, infamously conducted under a guard of German mercenaries to Kingsbridge, and lodged in the prevost. They were, however, in a few days liberated upon parole. After which they were brought to a Court Martial, tried, and sentenced to an imprisonment of two months, and to ask the pardon of Emerick at the head of the troops at Kingsbridge. This sentence (unjust, illegal, arbitrary, and oppressive as it was) received the confirmation of the Commander-in-Chief. Let me ask what power or authority had the military over these gentle-

men? They had no connection with the army. What was the crime? What the great offence? Nothing more than a bare assault and battery, the most trifling offence of which the civil law takes cognizance, and to its jurisdiction the trial of such offences only appertains. Pecuniary damages can only be recovered, and such damages assessed, by twelve men under oath, and after having the evidence fully canvassed on both sides. To this tribunal of law the controversy should have been left. But to substitute a Court Martial for the trial of the most trifling offence that the laws of England know of, instead of a Court of Justice, to bring private gentlemen unconnected with the army, to the bar of such court as criminals, to condemn, imprison, and compel a submission, the most degrading in its nature to men of honour, of character, of fashion, of fortune, and family, which the two young gentlemen were, plainly evinces what power can, and will do, when lodged in the hands of arbitrary, despotic men, unrestrained by the laws of the land, under no check from the constitution, and unguarded by the civil power.

An honest, substantial, freeholder of the City of New York, a person of character and reputation, I forget his name, he lived in John street, was taken up, confined in the prevost, and brought to a Court Martial, for a dispute with a subaltern which ended in blows, and sentenced (to the scandal, disgrace, and infamy, of all Courts Martial be it mentioned), to receive 300 lashes at the halberts from the drummers of the army. This illegal, arbitrary, and unjust, sentence, was confirmed by General Clinton, then Commander-in-Chief,<sup>1</sup> and most rigorously and severely put in ex-

<sup>1</sup> Jonathan Mallet, a gentleman of the utmost humanity, then physician to, and purveyor of, the hospital, upon being told that the sentence was to be that

ecution. Had this man been tried in a court of law, and convicted, nothing could have been recovered but pecuniary damages, and these assessed by a jury upon oath. Instead of which, a freeholder, an inhabitant, a person wholly unconnected with the army, was dragged from his house, from his wife and children, by the cruel hand of military power, for one of the least offences in the land, upon the complaint of an officer, tried by a Court Martial consisting of officers, and condemned to a punishment inflicted, under the English Constitution, upon none but criminals. Such were the methods taken during the rebellion to carry into effect his majesty's most gracious intentions of "reclaiming" his deluded, conciliating his disaffected, and removing the fears and jealousies of his unhappy, discontented, American subjects.

Micah Williams, a young gentleman of fortune, character, and loyalty, having forbidden the entrance of a negro driver with a number of horses, into his uncle's stack yard (with whom he lived), was abused and insulted in the grossest manner by the black rascal, who, persisting in his design, and attempting to pull down the fence, Williams gave him a kick or two upon "the seat of honour." The fellow complained to the conductor of the wagons and horses, the conductor complained to the officer who commanded the party. It was a foraging party. No inquiry was made into the truth of the complaint; the officer took the word of the conductor, the conductor's evidence was the word of the negro. It was, however, sufficient.

day executed, with his usual good-nature repaired to the Commander-in-Chief, stated the cruelty and hardship of the case, and obtained a pardon. But before the order could reach the prevost, the sentence had been most barbarously and inhumanly put in execution.

Williams was taken up and confined. This happened at a village called Jerusalem, on Long Island. The next day he was escorted under a guard of soldiers as far as Hempstead, about eight miles from his place of residence. He was there confined for the night. He was the next day marched to Jamaica, the officer declaring his intention of carrying him to New York, and trying him by a Court Martial. For what? For kicking a negro runaway, in the very act of committing a trespass upon his uncle's property. The young gentleman, as he approached New York, grew frightened. He knew the arbitrary, illegal, and cruel, judgments and decrees of Courts Martial in many instances, and the barbarity with which the king's subjects were daily treated by the military, and apprehensive that he might, by such a court, be severely, and infamously, treated, (though illegally, and unjustly), without the least hope, or expectation, of redress, he got some friends to intercede with the officer in his behalf. Through their application, he with difficulty obtained his discharge, but was first obliged to ask pardon of the officer, the conductor, and the negro. Such cruelties did his majesty's loyal subjects suffer, such insults were they obliged to bear, and to such hardships were they compelled to submit. The military had abolished, arbitrarily and illegally abolished, the civil law, and shut up the Courts of Justice. Armstrong was the name of the officer, King the name of the conductor, and Quamino that of the negro driver.

One Hicks, a very honest, loyal subject, (strongly recommended as such by General Vaughn), hired a house in Broadway, New York, in the spring of 1778, (from the attorney of Captain John Peter De Lancey of the Royal Irish), for a tavern or house of entertainment.

The agreement with the attorney was afterwards fully ratified and confirmed by the principal. The tenant liked the landlord, and was a man of property and punctual in the payment of his rent. The landlord approved of his tenant. The latter lived in the house till the spring of 1780, when General Pattison, the Commandant of the City, without the leave, license, or consent of Captain De Lancey, who was then serving his majesty in East Florida as Major in the Pennsylvania Loyalists, or of Thomas Jones, Esq., his attorney, who was then a prisoner in Connecticut, at the request of Mr. Commissary Loring,<sup>1</sup> without the shadow of a reason, turned this man (the lawful tenant) out of his house, into the street, with his family, his furniture, and effects, and substituted in his place one Roubalé, a pimp, a dependent, and a servant of the Commissary. Upon General Clinton's return from Carolina, Hicks applied for redress, but got none. He then applied to Governor Robertson, from whom he got *fair words* and *ample promises*, but nothing more. When Patterson sailed for England Hicks followed, but luckily for the Commandant, the poor fellow died upon his passage. Had he arrived in England, as he had a witness with him, Westminster Hall would have rung and resounded, with the illegal, the arbitrary, the despotic, cruel, and unrighteous act, and ample and sufficient damages must have been given by an English jury, a jury of freemen, upon oath, and bound to do justice without favour or affection.

<sup>1</sup> Commissary of Prisoners in New York, and husband to the famous and celebrated Mrs. Loring, who, as Cleopatra of old lost Mark Antony the world, so did this illustrious courtesan lose Sir William Howe the honour, the laurels, and the glory, of putting an end to one of the most obstinate rebellions that ever existed.

In September, 1780, one Ezekiel Robins, an honest, worthy, loyal, mechanic, was dragged from his house and his business, by an order from General Birch, then Commandant of the City, without any specific charge, lodged in the prevost, and there detained among deserters, rebel prisoners, murderers, and robbers, for more than a month; when, after repeated applications for a hearing, a trial, or a discharge, he was released, but never heard, tried, or even examined. The Adjutant-General, Oliver De Lancey, declared openly "that his only crime was that of having been "seen in bad company," modestly adding, "that a "month's imprisonment would be of great service to the "young fellow." Was this the way to make friends of rebels? Was this the way to reclaim the deluded? Or, was this the way to conciliate the disaffected? Such, however, were the cruel, arbitrary, and illegal acts, daily committed upon his majesty's loyal subjects within the lines during a rebellion of seven years' continuance.

I have seen a conductor of wagons upon a foraging party on Long Island, turn 50 horses into a loyal farmer's orchard, where his apples were gathered and put into heaps ready for making cider, and though the farmer earnestly begged the conductor to put them into a field where the pasture was better, the request was insultingly refused, and the apples, which turned into cider would have produced £200, were totally destroyed. The farmer, one Isaac Lefferts, near Jamaica, upon remonstrating with the conductor against so extraordinary a conduct, was called a "damned old rebel." He had, it is true, been a Committee man, but upon General Howe's first proclamation, in November, 1776, he came in, submitted, and renewed his

oath of allegiance. What confidence could be put in the proclamations of Generals when they were so flagrantly, unjustly, and openly, violated? And yet, the proclamation, in consequence of which the farmer surrendered, pledged the faith and honour of the Crown, that every person availing himself of it, should be protected by his majesty in his life, liberty, and property.

I have seen 60 horses put into a field of corn belonging to a farmer by the name of Polhemus, about three miles from Jamaica, and the whole absolutely destroyed, notwithstanding all his entreaties to the contrary. The conductor damned him for a scoundrel, a rebel, and a villain, and swore he would do as he pleased. This farmer was ever noted for his loyalty, in consequence of which he had been a considerable sufferer while the rebels possessed the Island.

A gentleman who was present told me, that he saw a conductor of a foraging party put 100 horses into a countryman's barn, and ordered them littered with oats in the sheaf, instead of straw, and fed in the same manner. That above 300 bushels of oats were destroyed in this way. That the owner in the morning civilly asked for pay, or a certificate. Both were refused. He was damned for a rebel, and the party decamped. The name of this farmer was Israel Okely, of Queens County, a loyal subject, and at this very time, a Lieutenant in the Queens County militia, by virtue of a commission from his majesty, granted by General Tryon, in 1778, under the great seal of the Province of New York, of which he was then the Civil Governor.

I have been told the following instances of outrage by Thomas Jones, Esq., before the war, and until its end, one of the Judges of the Supreme Court of the

Province, a gentleman of noted and remarkable loyalty, and so obnoxious to the rebels upon that account, that he was three times a prisoner, was confined in Connecticut for ten months, his farm once robbed of his fat cattle, his coach horses, and wagons, and at another time, of his household goods to a large amount. All this was well-known to the army. His character was known, his loyalty was known, his sufferings were known, his attachment to the British Constitution was known. Yet, did a Quarter-master of dragoons take his horses from his ploughs, in the busiest season of the year, put them into his own wagons, these wagons laden with the stores of a sutler, his own servants obliged to drive the wagons as far as Southampton, the distance nearly 100 miles, and detained for three weeks; the servants compelled to provide for themselves and horses the whole time, and when discharged, to receive neither pay nor certificates. He told me, also, that he had, in the winter of 1778, when the snow lay heavy and deep upon the ground, 12 pair of oxen, which had been hard at work in the woods the whole day, and were just returned, put into a barrack-yard and foddered; then they were taken away by a party of the British army, put into his own carts, and loaded with the materials of a meeting-house which they had pulled down a few days before, his servants obliged to drive the carts as far as Jamaica, the distance 20 miles, to provide for themselves and cattle, and discharged without pay or certificate.

I have heard a gentleman, John De Lancey, Esq., of the Borough of Westchester, declare, nay, even boast of it as a meritorious act, that in the fall of 1776, he went to the house of one Legget, in the Borough of Westchester, took out of his pen, and drove home,

twelve fat hogs, killed and appropriated them to his own use. Legget was at least 80 years of age, was no rebel, or at least never acted under Congress. On the contrary, this gentleman plunderer, who, under pretence of loyalty, had robbed the old man under pretence of being a rebel, had been an active, warm, zealous, member of the Committee of Fifty-One, first established under Congress in New York, in the year 1774, and had taken the association formed against government by the rebel leaders in 1775. In this case the sufferer could obtain no redress. The Courts of Justice were shut, and the civil law, the laws of the land, the laws of England, and the municipal laws of the Province were declared at an end by the military, who assumed the power of the whole to themselves, and exercised it with a high hand, with barbarity, with inhumanity, and without the least shadow of reason, justice, or impartiality. As the Courts of Justice were not open, and the civil law totally abolished, the delinquent, of course, went unpunished. He ate the stolen pork with impunity. The poor old man was obliged to bear the loss, and submit to the robbery.

So many thousands of these illegal and felonious acts were committed within the British lines during the war, that an enumeration of them would, of itself, fill a folio; another, however, I shall relate, nor ought it to be omitted.

In the Spring of 1779, the Commander-in-Chief, Sir Henry Clinton, with his suite, went from New York to Southampton, at the east end of Long Island, to review the troops that had been quartered there the preceding winter. They took the middle road; the baggage-wagons escorted by a party under the command of an officer, went the southern road. A

junction was to be formed at Islip, at the house of Richard Willets. The escort to the wagons, for nearly twenty miles upon the road, prior to the junction, robbed every farmer of as many geese, turkeys, and other poultry, as they could conveniently lay their hands upon, with calves, lambs, and pigs; they even entered several dwelling-houses, and plundered the inhabitants of their linen, stockings, hats, &c. Some substantial, reputable, farmers, vexed at this infamous usage, followed as far as Willets. They applied for, but were refused, a sight of the General. They then related their grievances and made their complaints known to his attendants, by whom they were cursed for rebels, damned for impudent villains, and obliged to return without the least satisfaction. Let me once more ask, was this the way to conciliate the affections of his Majesty's deluded subjects? To prevail upon the discontented to submit to the Government of Great Britain, and return to their allegiance? Was this a proper method of reclaiming rebels? Or was this the way to convince them of the tyranny and oppression of Congress, and of the virtue and lenity of the English nation? Yet these were the steps pursued by the army during the whole war. They at last grew afraid of marching out of the lines and robbing rebels, but as plunder seems to have been their main object, his Majesty's loyal subjects within the lines were daily pillaged, and that with impunity. No complaint could be heard, no redress obtained, nor justice procured.

A few instances shall be now mentioned, in which murderers and other delinquents went unpunished, from a want of power, or inclination in the military to punish such offenders by martial law; and in consequence

of the abolition of the civil law, and the shutting up of the courts of justice.

One Amberman, a miller at Hempstead, sold some flour to a Major Stockton of Skinner's Brigade, who lived in the neighbourhood. The miller wanting his money, applied for payment. This the Major looked upon as an affront, therefore the next day, in company with a Major Crew, he went to the mill fully bent upon chastising the insolence of the miller, in daring to ask for the payment of a just debt. Upon arriving at the mill, Crew instantly began to horsewhip the poor miller, and while he was labouring under the discipline of the whip, Stockton deliberately drew his sword, and ran him through the body, of which wound he instantly died. No inquisition could be taken, the civil law was at an end, of course we had no coroner. Stockton was however taken up, confined, and tried by a court martial for the murder, found guilty, the sentence confirmed, yet strange to tell, never carried into execution, and what is almost incredible, yet averred as a fact, General Clinton sent to the widow desiring her to join in a petition to him to pardon the murderer of her husband. This she absolutely refused. The Major continued in jail a few weeks, was then liberated by the General's order, and publicly walked the streets. The military scarcely looked upon it as a crime, at least a crime not worth punishing. Where was the offence in murdering, deliberately murdering in cool blood, with malice prepense, an honest old miller, a loyal subject of his sovereign for daring, or rather having the impudence, to ask from an officer of the army the payment of a small, just, debt? None, said the Commander-in-Chief, none said the military. Stockton was accordingly discharg-

ed, and again employed in his Majesty's service, a reward for murdering one of his good, peaceable, and loyal subjects.

In the spring of 1781, three privates of the third Battalion of De Lancey's Brigade left their quarters at Lloyd's Neck, went to a lonely house, a small distance from Jerusalem, in Queens County, belonging to one Parmenas Jackson, an honest, worthy, loyal Quaker, broke it open, murdered the man in the most cruel manner, robbed the house of £1,200 in cash, and went off. Luckily a woman present, knew one of the villains, and knew the corps to which they belonged. An express was immediately sent to the Colonel, the rascals were soon discovered, and the greatest part of the money recovered. The criminals were sent to New York, tried by a Court Martial, found guilty, sentenced to be hanged, and the sentence confirmed by General Clinton. But this sentence, just as it was, to the surprise and astonishment of most people, was never carried into execution. Good reasons, however, may be given why sentences of this kind were not executed. There may be a doubt, whether Courts Martial, in cases of murder, committed as these were, have power to try or punish, the power of such courts being restricted and limited by the mutiny act, and the articles of war. And these murders being committed upon persons having no connection with the army, the offences were cognizable only in a court of civil law. If so, Clinton was prudent in not punishing for crimes not properly cognizable by Courts Martial. But pray what reasons can Governor Robertson give, to whom it was often mentioned, for not issuing a Commission of Oyer and Terminer for the trial of these criminals? He was

authorized so to do by his commission. The Great Seal of the province was in his possession. The court might have been, as to its duration, limited to a fortnight, or three weeks only. But in such a case there must have been civil Judges, a Sheriff, constables, Grand Jurors, petty jurors, &c., and this would have had so much the appearance of the re-establishment of the laws of the land, and the ordinary courts of justice, that the very idea was *insufferable*, and every hint of the kind *spurned at*. The culprits lay in jail about three months, the only punishment for a horrid, wicked, and deliberate murder, and were then discharged upon paying some trifling fees to the keeper<sup>1</sup> of the prevost.

Richard Floyd, Esq., a gentleman of the first rank, fortune, family, character, and reputation, in the county of Suffolk, upon Long Island, and Colonel of the militia in the same county, by commission from Governor Tryon under the Great Seal of the province, (in which station he continued during the rebellion, and signalized himself in several instances on the part of his sovereign) <sup>1</sup> was charged upon oath by one Charity French, (a New England refugee, a wretch of a most notoriously bad character, a fellow that nobody who knew him would believe a word that he said) with having protected and concealed rebel property. The case was shortly this. A loyal refugee had part of the farm of a Major Smith, who was then in actual rebellion, which adjoins Floyd's, given him by Government

<sup>1</sup> He was included in the rebel act of Attainder, of the 22d of October, 1779, on account of his loyalty and attachment to the Crown, and his large estate, the whole of which was by that act confiscated, and himself attainted. Upon the evacuation of New York, he removed to Connecticut, and from there to Nova Scotia, where he still lives an exile from his relations, his friends and connections.

to improve for his own use. Floyd's crop of corn failing, he made a purchase of the refugee of his, and which, when ripe, he had, according to agreement, gathered and brought home. This was made the foundation of the charge. French lived in the vicinage and had possessed part of the same farm. His bad behaviour occasioned his being dispossessed. He suspected Floyd for the informer, and was determined upon revenge. He accordingly went to New York, and entered a complaint with Matthews the Mayor, that Floyd had taken Smith's corn under his protection<sup>1</sup> in order to sell for Smith's use, and prevent the army from having it. The Mayor well knew French and his character. He knew him to be an infamous, notorious, lying, scoundrel. He also knew Colonel Floyd, his character, his fortune, his family, his connections, and his station in life. French was, however, permitted to swear to the fact. His worship upon such occasions was entitled to a fee. French, possessed of the affidavit, by the Mayor's directions, carried it to the Commander-in-Chief, by whom he was referred to General Vaughn, who then commanded upon Long Island, and had his head-quarters at Newtown, about six miles from New York, and by him to Sir William Erskine who had the command of the troops then quartered at Southampton, in Suffolk County. Neither of these gentlemen knew Floyd. Neither of them knew French. Sir William Erskine, upon inquiry, finding that Floyd was a steady, staunch, Loyalist, a Colonel of the county militia by a commission under the Crown, a gentleman of character, reputation

<sup>1</sup> Major Smith's wife and family were allowed by Government to keep the possession of one-half of the house, and about a third of the most valuable part of the farm, which was large and extensive.

and of fortune, of the first family, and of the best connections in the county, politely wrote him a note, mentioned the complaint, and desired to see him. The Colonel was therefore obliged to travel from his own house to Southampton, the distance about 40 miles, to clear up a character scandalously attacked by a notorious villain. Luckily Major Oliver De Lancey, Captain Needham, and Ensign Stapleton, all of the the 17th Light Dragoons, then at Southampton, were well acquainted with Floyd, his family, his loyalty, and his connections. They were also at the Colonel's house, and present when the agreement was made. This at once unravelled the whole, the rascal appeared in his true colors. Sir William was satisfied. Floyd was, however, obliged to travel, at Sir William's desire, with a letter to General Vaughn, at Newtown, about 130 miles from Southampton, to let him know how the matter had terminated. This done, Vaughn gave the Colonel another letter to carry to Sir William approving of his conduct in the business. After this was accomplished, Floyd had to return home 40 miles more. Here upon the complaint of a most notorious villain, founded upon the most palpable perjury, was the character of a gentleman of the steadiest loyalty, and a military officer high in rank under the Crown, traduced and villified, and to clear up which, he was obliged to travel 340 miles in February, 1779, a most rigorous season of the year in that part of America. The culprit remained within the lines, but for want of civil law, and courts of justice, the Colonel could neither recover his damages, nor punish the villain for his perjury. It is even shocking to relate, that a gentleman of Colonel Floyd's character should be dragged from his family upon the complaint of a most infamous

fellow, charged with the highest crime that the laws of England knew of, nothing less than high treason ; obliged to travel 340 miles in the depth of winter to establish his character, which when effectually and satisfactorily done, no reparation could be obtained from the complainant, no action could be brought, no indictment preferred. Floyd remained uncompensated in damages, the perjurer went unpunished, the consequence of being deprived of the laws of the land, and the constitutional courts of justice.

## CHAPTER VI.

OUR next inquiry shall be, what occasioned the laws of the Province, the common law of England, and those acts of Parliament which the colonists always acknowledged binding upon them, *to be abolished*; and those Courts of Justice which were, from the first settlement, or rather conquest, of the Colony, open by those laws, and the English constitution, for the equal administration of justice among all degrees of his Majesty's subjects, *to be shut up?*

Governor Robertson, with Matthews the Mayor, Ludlow the Long Island Superintendent, Livingston the Overseer and Manager of rebel estates, and Bayard the new-made provincial Secretary, alleged that the prohibitory act deprived all his Majesty's subjects within the thirteen Colonies therein enumerated, of the liberties and privileges of Englishmen, put them out of the protection of the Crown, and subjected their property to confiscation. I have read the act. The meaning, design, and intention, of most acts, by comparing the several clauses with the preamble, may, in most cases, be easily discovered. Upon a deliberate and careful perusal of this act, it never appeared to me that such a construction could rightly have been put

upon it. The act was entitled, "An act to prohibit all trade and intercourse with the Colonies of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the three lower Counties on Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, during the continuance of the then rebellion, etc." The preamble to the act recited that "many persons," not the whole, or even a majority, in the aforesaid Colonies, had set themselves up in open rebellion in defiance of the legal authority of the King and Parliament of Great Britain, to which they ever had been, and of right ought to be, subject, had assembled together an armed force, engaged the King's troops, attacked his forts, usurped the powers of Government, and *prohibited all trade and commerce* with Great Britain, and the other parts of his Majesty's Dominions. For the more speedy suppressing such wicked and daring design, and for preventing any aid, supply, or assistance, being sent thither during the continuance of such treasonable and rebellious commotions, it was enacted, "That all manner of trade and commerce should be prohibited within the Colonies aforesaid, and that all ships or vessels belonging to the inhabitants of the said Colonies, together with their cargoes, apparel, and furniture, which should be found trading in any port, or place of the said Colonies, or going to trade, or coming from trading, in any such port or place, should be forfeited to his Majesty, as if the same were the ships and effects of open enemies, and should be so adjudged and taken in all courts of Admiralty, and in all other courts whatsoever." The act then went on with a number of clauses, in the

same manner, and to the same effect, as are contained in all acts of Parliament usually passed upon a declaration of war against a foreign enemy, subjecting their effects to forfeiture and confiscation, and appropriating them to the use of the captors. The act contained not a word about the forfeiture and confiscation of *real property* within the Colonies, or even of *personal*, unless taken in the way of trade, seized upon the high seas, or found on board of vessels carrying on such prohibited trade; neither was there a syllable in the whole act of *shutting up* the Courts of Justice, or *abolishing* the Civil Law, or *depriving the inhabitants of the liberties of Englishmen*. On the contrary, the act expressly declared "that all ships and "vessels trading as aforesaid, in opposition to the act, "should be forfeited, as if the same were the property of "open enemies, and should be so adjudged in all Courts "of Admiralty, and in all other Courts whatsoever."

If the Prohibitory Act deprived his Majesty's subjects living within the lines, under his jurisdiction and protection, and owing their allegiance to him, "of the "liberties and privileges of Englishmen," by abolishing the powers of the Court of Chancery, of the Supreme Court, the Courts of Common Pleas, Quarter Sessions, the Mayor's Court, and those of the Justices of the Peace, how came it, that the Court of Admiralty, and the Prerogative Court, within the lines at New York, continued in full possession of all their powers, notwithstanding the Prohibitory Act? If the powers of all the other civil law courts were abolished by the act, why were not those of the Admiralty and Prerogative Courts also? The act directed the Court of Admiralty, as well "as all other courts whatsoever," to take cognizance of the forfeitures and confiscations

mentioned therein. If by this clause the Court of Admiralty, and the Prerogative Court, claimed their powers and jurisdictions, as existing from their original institutions, without any other interruption than what the rebel declaration of independence gave them for a short time, why might not the several other courts have claimed and exercised their respective powers and privileges in virtue of the same clause? It mentioned not only Courts of Admiralty, but "all other courts whatsoever."

There was another clause in the act worthy of consideration. After reciting, "that prior to passing of "the act, divers persons, vessels, and other effects, might "have been seized, detained, searched, or destroyed, for "the public service, all which were thereby declared "legal to all intents whatsoever," it then further enacted, "that if any action or suit should be commenced "against any person by reason of any thing done "as aforesaid, or by virtue of the said act, that "such action should be commenced within six calendar "months after the fact committed, and not afterwards." If the act intended to suppress all the civil law courts in the thirteen colonies, why was the above clause inserted? If it was the real design of the British Legislature to shut up the courts of justice, and put an end to all civil law until the rebellion was over, where was the necessity or reason of limiting plaintiffs to a certain time in bringing their actions, or of *being barred?* The clause surely could not refer to the Courts of Admiralty, and to the Prerogative Courts only, for the act expressly mentioned certain actions of which the Admiralty and Prerogative Courts could have no jurisdiction, and were cognizable only in the courts of common law.

When this act passed, the inhabitants of the thirteen colonies were professing and acknowledging their allegiance to his Majesty as his faithful and loyal subjects. The Congress were petitioning in the most humble and submissive manner, in the behalf of their constituents, for a redress of nothing more than what they looked upon, or called, "*grievances*." Can it then be supposed that the Parliament meant by that act to throw the Colonies into anarchy and confusion, by depriving them of the laws of the land, of the laws made by themselves, and of the administration of justice in the common and civil law according to the ancient and established usage? If so, why the clause in the act to compel the bringing of certain actions within a limited time, or to be barred? Most of the actions enumerated were local ones, and must have been commenced in the places where the causes arose. The act supposes the causes of action mentioned therein, to have arisen, or that they would arise, in America, and within some of the thirteen colonies. Such causes could, therefore, be legally tried nowhere else. For the trial of such causes the act expressly gave a power, not only to the Courts of Admiralty, but to *all other courts whatsoever*; that is, a power to each court to take cognizance of such of them, as were properly cognizable in their several, and respective, jurisdictions. How, then, could it be pretended that the intention of the act was to deprive his Majesty's subjects of the liberties and privileges of Englishmen, by abolishing the laws of the land, and shutting up the courts of justice within the thirteen colonies?

If the act abolished one court, why not another? Why not every one? Can a satisfactory reason be given why the Court of Chancery, a court claiming,

exercising, and possessing, similar jurisdiction upon land, with that of the Court of Admiralty at sea, should be abolished, while the Court of Admiralty continued its jurisdiction? That the act should mention the Courts of Admiralty and "all other courts whatsoever," and yet the Admiralty, and Prerogative Courts only, should be suffered to proceed in the exercise of their respective powers, and all the other courts shut up and deprived of theirs, is really amazing. Reasons, however, strong, forcible, and substantial, may be given, though perhaps not quite satisfactory, good, or conclusive, to the bulk of my readers. The Court of Admiralty was necessary for the condemnation of prizes brought into New York by the Navy. It was, therefore, allowed to be in full possession of all its powers. But the Supreme Court, which ought to be a check upon the Court of Admiralty, and by issuing writs of prohibition, prevent that court from taking cognizance of causes not within its proper jurisdiction, was shut up and abolished. In the Supreme Court debtors might be compelled to pay their just debts, trespassers and other violators of the law punished, and the military power controlled. The aggrieved subject in every case knew where to apply for redress. No wonder it was abolished! It was the interest of the army, and particularly of those leeches, the Barrack-masters, Quarter-masters, Commissaries, and a numerous train of &c., that it should be so.

The Prerogative Court was also allowed the full possession of all its powers. By this court licenses of marriage were daily granted, wills proved, and letters of administration upon intestate estates issued, and all controversies relating to the granting of such licenses, proving of wills, and granting letters of administration

were heard, examined into, and determined. But then all the fees, perquisites, and emoluments belonging to this court, were the sole property of the Governor, Robertson, and the new made Provincial Secretary, Samuel Bayard, Jr., who acted under him as Surrogate of the Province; and which said fees, perquisites, and emoluments, as there was neither law, justice, nor ordinance, equity, or conscience, left, to regulate and establish the quantum, were in most cases charged double, in many treble, to what were by ordinance allowed prior to the rebellion, and amounted annually to an amazing sum.

By the suppression of the Supreme Court the Admiralty Court was left without either *check* or *control*, and the judge of that court<sup>1</sup> might, had he so pleased, had all disputes relating to private property, titles to real estate, and all other controversies arising, as well as all treasons, murders, felonies, and piracies committed within the lines, determined in that court by himself without the assistance of a jury. It should have been considered that the extension of the powers of the Vice-Admiralty Courts was one of the capital complaints of the Colonists against Great Britain, and a principal cause of the late unhappy rebellion. Interest, however, was the only thing then thought of. By the suppression of the Supreme Court, and the Court of Chancery, the Prerogative Court also became uncontrollable, under

<sup>1</sup> Robert Bayard, Esq.; a gentleman, bred in the army, appointed by General Tryon, then Governor of the Province, Judge of this court, though a person of very inferior abilities, and totally ignorant as to all matters of law. Mr. Tryon, though a sensible, worthy, judicious man, frequently made such blunders. I do not accuse Mr. Bayard of doing an unjust act in the course of the war. He must have had good advisers. In this he showed good sense, and great prudence. I never heard any complaints of his decrees, his judgments, or decisions, though he made many hundreds during the war.

no check, and the suitor who thought himself aggrieved by a decision, a judgment, or decree of the Surrogate, was remediless. There was no other court, jurisdiction, or tribunal to apply to.

That there are any words in the act which could be construed to take away, and abolish, the Court of Chancery, the Supreme Court, the Courts of Common Pleas, Mayors' Courts, and those of Justices of the Peace, and left the Court of Admiralty, and the Prerogative Court, in the full and quiet possession of their respective powers, privileges, and jurisdictions, I deny. The old, ancient, fundamental, courts, were either all taken away by the act, or not. It is ridiculous and absurd, to suppose that the act intended to abolish, or suspend, all the courts of justice, except the Admiralty and Prerogative Courts. I can find no words in the act that warrant such a construction. If any such words there are, they never were pointed out by the advocates of a construction so arbitrary, unjust and preposterous. I considered the act carefully, and with attention, upon its appearance in America. I perused it over and over, again and again, and must confess I never could find any words therein, upon which such a construction could be formed, or such a conclusion drawn. But I am no lawyer.

We inhabitants of the Colonies, were by no words in the act declared out of the King's protection. There was, indeed, in the last page, a proviso giving the Commissioners a power, upon certain conditions, of granting pardons to any number or description of persons, and of declaring any colony, or county, town, post, district, or place, in any of the Colonies, to be at the peace of his Majesty. Could the above power of *granting* pardons, and *declaring* us out of the King's peace,

given by the act to the Commissioners, even by implication, be construed into an outlawry of the Provinces, a deprivation of the rights and liberties of the inhabitants to the laws of the land, the benefits of the courts of justice, and the liberties, privileges, and franchises of Englishmen? Most certainly not. The meaning was self-evident. "Granting pardons" undoubtedly meant *pardons* to such persons as had been actually in arms against their Sovereign, or had served as officers, either in a civil or military character, under the usurpation; who had acted in Congress, in provincial conventions, or in committees; persons of this description the act considered as traitors, and to whom, upon submission, *pardons* would be necessary. A power for this purpose was, therefore, given to the Commissioners by the act. His Majesty's loyal subjects within the thirteen colonies who either remained peaceably at home, or opposed the rebellion as far as they were able, and used their endeavours for its suppression, never could have been intended by the act, or considered by the Parliament of Great Britain, as traitors, out of the King's protection, or standing in need of *pardons*. It was a considerable time before such a thought was suggested, or such a construction put upon the act. No Loyalist was ever required to apply for, and take out, a pardon. It was looked upon by the Commissioners as unnecessary. But all those who came in, left the rebels, and submitted to government, and who had acted under the usurpation, were advised, thought it prudent, and did take out pardons, in consequence of the powers granted by the act to the Commissioners. It was to the *actors* in rebellion, not to the Loyalists, to whom pardons were necessary. The Loyalists were never out of the King's peace. The act

never considered them in that light. They ever acknowledged their allegiance to their Sovereign, opposed the rebellion, and suffered, numbers of them, amazingly, some to the loss of everything and to the ruin of their families, in consequence of their attachment to the royal cause. Their conduct was applauded by the King, by the Ministry, and by the Parliament. They were promised protection, promised rewards, and encouraged by royal proclamations, and acts of the Legislature of Great Britain to give the utmost of their assistance to quell and suppress the unnatural, rebellious commotions, then unhappily existing in the Colonies. Did the act intend to put these people out of the King's peace, to deprive them of the courts of common law, the laws of the land, or the liberties and privileges of Englishmen? I should think not. The act as to "*granting pardons*" undoubtedly meant, to such persons as had actually been engaged, in some shape or another, in stirring up, fomenting, carrying on, and supporting, the rebellion. It meant the *disloyal*, not the loyal, inhabitants within the thirteen colonies, which latter, when the act passed, consisted of at least one-half of the whole. By the words, "*restoring to the King's peace*," was evidently intended a "*restoration*" to the privilege "*of trade and commerce*," in such manner as the same had been enjoyed prior to the passing of the act. It was clear from the title of, the preamble to, and every clause in, the act, *that it related only to the trade and commerce of the thirteen colonies*, which it totally and absolutely "prohibited," not only from one province to another, but from and to every part of the world; and all vessels taken, carrying on such trade, with their goods, merchandise, tackle, and apparel, were declared liable to

forfeiture and confiscation, as much as if the property of *foreign enemies*. But as it was highly probable, or at least thought so, by the British Parliament at the time of passing the act, that some one or another of the colonies, or some city, port, district, or place within some, or one, of the said colonies, might submit, while the others continued in arms, and as it would have been hard and cruel not to have granted to such submitting colony, city, port, &c., the full advantages of that trade and commerce which they enjoyed before the act passed, and to the inhabitants thereof who had been in rebellion, pardons for their treasons, a proviso was added at the close of the act, vesting the Commissioners with a power of "restoring to the King's "peace," which could mean nothing more than a power of dispensing with, or rather of suspending, the act so far as it related to, or affected, the *trade and commerce* of any submitting colony, city, district, port, or place, of which the act had deprived the inhabitants.

The forced, strained, and ungenerous construction put upon the act, "that the king had abdicated the "thirteen Colonies, put them out of his protection, "declared the inhabitants rebels, proclaimed war "against them, deprived them of the Courts of Justice, and of the laws, liberties, and privileges of "Englishmen," was artfully contrived, and industriously propagated by Congress through the thirteen colonies, to serve their own purposes, by prevailing upon a majority of the people to consent to, and acquiesce in, a Declaration of Independence. It had the desired effect. A majority was said to have consented to the measure in each Colony, and Independence was accordingly declared.

In Congress at this time served, as one of the Del-

egates for Pennsylvania, a certain Joseph Galloway, Esq.,<sup>1</sup> a principal hand in setting up, and supporting, the above construction. Upon the royal army's getting possession of Staten Island, Long Island, York Island, and the province of New Jersey, in 1776, and expected every day to enter Pennsylvania and take possession of Philadelphia, this gentleman abandoned Congress, joined the king's army, submitted to Gov-

<sup>1</sup>The *Remembrancer* speaks of him thus: "Early in the contest with Britain he espoused her cause, and to the extent of his abilities, endeavoured to enforce the Stamp Act, and to subject America without her consent to taxation by the British Parliament, though, as a lawyer, he knew the system was destructive to America and inconsistent with the Constitution of England. He exerted all his power, his influence, and artifice, to carry the act into execution. This failing, and America carrying her point by a repeal of the act, he pretended a conversion to her principles and interest. By this deceit he obtained a seat in Congress. Here, while he pretended a zeal to promote their interest, he betrayed their designs, plans, and secrets, to the enemy. When he found his arts detected he secretly fled from Philadelphia and joined the British army in New Jersey." Further to illustrate this gentleman's character, when he thought an active part in endeavouring to enforce the Stamp Act, would serve his purposes, by securing an interest in England, he warmly espoused the cause. When the act was repealed he veered about and became the great friend of the liberties of America, and a most inveterate enemy to American taxation by the British Parliament. He had a seat in the 1st, 2d, and 3d, Congress, and was a leading member in each. When the royal army, in 1776, were victorious in every quarter, and the dispute by most thought at an end, he left Congress, went to New Jersey, submitted to Sir William Howe, abjured Congress, renewed his oaths of allegiance, and received a pardon by his submission, and the intelligence he gave the general, and by fawning, adulation, and flattery, he gained his confidence. He became one of his principal advisers, he planned the expedition to Philadelphia by the way of the Chesapeake, which eventually proved the ruin of America. Sir William made him Superintendent of the Court of Police, and of all exports and imports at, in, and out, of Philadelphia, with a salary of about £600 sterling per annum. Such was the *gratitude* of this gentleman, that no sooner than the General's disgrace and recall took place, than he went to England, offered himself as a voluntary witness, was examined as such at the bar of the House of Commons, and by the lump condemned every measure which had been pursued by Sir William while Commander in America, though most of them, after his submission, were of his own advising. He afterwards scandalized, abused, and libelled his benefactor, in the publication of a number of pamphlets, which he dispersed in every part of the kingdom, in order to ingratiate himself with, and please, the Ministry. Thus you have the portrait of the *famous* Joseph Galloway, Esq., of Pennsylvania.

ernment, received a pardon, renewed his oaths of allegiance, and went to New York. Being artful, cunning, insinuating, and designing, he warmed himself into the good graces of General Howe, Lord Howe, General Robertson, Mr. Matthews the Mayor, Judge Ludlow, the Commissaries, the quarter-masters, and barrack-masters; and propagated the construction put upon the act by Congress, as aforesaid, and which strange construction had never before been even thought of in New York, by either the Governor, his majesty's Council, the Judges of the Supreme Court, and other courts of record, the king's Attorney, the gentlemen of the law, or in short by any of the inhabitants, nor had the idea, till then, ever suggested itself to the military. This doctrine was listened to with great attention, and as it was soon found that such construction would answer all the purposes of the military by countenancing plunder, preventing prosecutions, as well as the payment of just and honest debts, and would also serve the particular schemes, views, and designs, of a set of selfish, interested, arbitrary, despotic, individuals, it was taken up in as great a latitude as Congress designed, (though for very different purposes.) *And from this construction, first adopted by Congress, brought from thence, and propagated in New York by Galloway, originated all the miseries, disorders, injustice, plunder, extortion, and a thousand other unjust, illegal, arbitrary acts, which his majesty's loyal subjects within the British lines, consisting of more than 60,000 souls, experienced during the war from Generals, Governors, Quarter-masters, Barrack-masters, Commissaries, Courts Martial, and those inquisitorial Courts called Courts of Police.*

The Act, passed in November, 1775, was to take

effect on the 1st of January, 1776, and was transmitted to the several Colonies in December, 1775. Each province had, therefore, full notice of the Act prior to its operation. It was read, was talked of in all companies, and considered by every one. All *trade and commerce* from, and to, the Colonies was prohibited under pain of confiscation. The custom houses were of course shut up, and all *legal trade and commerce* from, and to, the Colonies at an end. But the Courts of Law continued open. All business in such Courts was transacted as usual, disputes regarding private property determined, and all criminals tried. The Governor, the Council, and General Assembly sat in their legislative capacities. The Governor and Council acted as a Court of Record. The Supreme Court transacted all kinds of business as before. Commissions of Oyer and Terminer were issued, courts held, criminals tried, and jails delivered, in consequence of such commissions. The Courts of Common Pleas, the Quarter Sessions, and the Mayor's Courts in New York, Albany, and Westchester, proceeded in the trial of all causes of which they had cognizance; so did the Justices of the Peace in the trial of petty larcenies and civil actions, cognizable before them in consequence of the laws of the Colony. The Governor, the Council, the General Assembly, the Judges, the Attorney-General, the lawyers, never conceived that this Act had put an end to the law, deprived the Courts of Justice of their powers and jurisdiction, or robbed his majesty's loyal subjects of the liberties and privileges of Englishmen. So far from it, the laws continued in full force, the Courts of Justice were open, and every thing therein carried on, and transacted, in the usual manner, until the Declaration of Independence by Con-

gress, on the 4th of July, 1776, which entirely abolished and subverted the power, authority, and jurisdiction of Great Britain over the revolted Colonies. Mr. Ludlow sat upon the bench of the Supreme Court, tried causes, and transacted all kinds of judicial business during the whole of January term, 1776. The Prohibitory Act was at this time in full force. This he well knew, and he at this time had not the least conception that the Act abolished the Civil law, and had shut up the Courts of Justice. If he did, why did he hold a Court and try causes, when he knew the Act was in full force? Mr. Matthews held the Mayor's Courts, and transacted all judicial business therein, as usual, till his imprisonment in June, 1776. He held a Court of Quarter Sessions in February, and another in May. These were after the Act took place. He knew the Act was in force. He most certainly did not then think that the Act had deprived his majesty's subjects of the laws of the land, and shut up the Courts of Justice. If he did, his conduct was very preposterous. Mr. Philip J. Livingston, afterwards Manager of rebel estates by Sir William Howe's appointment, was at this very time High Sheriff of Dutchess, and as such actually executed process of all kinds issuing out of the King's Courts, in the same manner as he did prior to the Act taking effect in America. Did he then look upon the law at an end, taken away by the Act, and totally abolished in the country? If he did, why did he perform the office of Sheriff in the same manner as he did prior to that Act being in force?

Suppose it was to be asked of Mr. Ludlow, and Mr. Matthews, what occasioned the alteration in their opinions, their conduct, and behaviour, after they had

officiated for six months, the former as a Judge of the Supreme Court, the latter of the Mayor's Court and the Court of Quarter Sessions, while the Prohibitory Act was in full force, which caused them to abandon those Courts of which they were the sworn judges, and instead thereof to accept of appointments under the proclamations of Generals, and Governors, and to act as judges of arbitrary, illegal, despotic, and unconstitutional Courts, called "Courts of Police," erected, fabricated, and set up, in opposition to, and in lieu of, the Courts of common law, and to declare those Courts, (in which they had acted in their judicial capacities for six months after the Prohibitory Act took effect), taken away, and with the laws of the land abolished by that very act? And further, supposing Independence had never been declared, the British army, instead of coming to New York, had gone to the southward, and the Prohibitory Act in full force, would Mr. Ludlow have thought of shutting up the Supreme Court, or Mr. Matthews those of the Mayor and the Quarter Sessions, and given the Prohibitory Act as the reason? Or, would Mr. Livingston, for the same reason, have refused to execute process issuing out of the King's Courts, and directed to him as Sheriff of Dutchess? Were these questions to be answered with candour, each would receive a negative.

So far was General Tryon, then Governor of New York, or his Majesty's Council, from imagining that the act in question had deprived the Colonists of the liberties and privileges of Englishmen, abolished the law, and shut up the courts of justice, that in January, 1776, he, by and with, the advice of his Majesty's Council, of which Daniel Horsmanden, Esq., the Chief Justice was one, and William Smith, Esq., an eminent

counsel, another,<sup>1</sup> dissolved the General Assembly, ordered writs issued under the Great Seal directed to the Sheriffs and other returning officers, commanding them to assemble the people, hold courts, and elect members for a new Assembly. The writs were accordingly issued, sent to the returning officers, courts of election held, members chosen, and the returns properly made. The Mr. Philip John Livingston before mentioned, was at this time Sheriff of Dutchess. He received his writ, assembled the freeholders, held a Court of Election, in which two members were chosen to represent that county, and made a return according to law. The Prohibitory Act was in full force, and as well known throughout the Colony, as any act of Parliament that was ever passed relating to the provinces. From this circumstance it is natural to suppose that Mr. Livingston did not then imagine that the courts of justice and the laws of the land were shut up and abolished by that act. He however afterwards altered his sentiments; he found it more to his interest.

In March, 1776, Governor Tryon, also with the advice of his Majesty's Council, issued a Commission of Oyer and Terminer for the county of Westchester, by virtue of which a court was held at the White Plains in that county, the beginning of April thereafter. A Grand Jury was summoned in consequence of a precept issued by the Clerk of the Circuits. The commission was published, the court opened, a person indicted for murder, tried by a petty jury legally summoned, the prosecution carried on by the Clerk of

<sup>1</sup> William Smith was, in 1780, made Chief Justice of New York, in the room of Mr. Horsmanden, deceased. On the evacuation of America in virtue of Lord Shelburne's glorious peace, he came to England, and was shortly after appointed Chief Justice of Quebec.

the Crown, the criminal sentenced to suffer death, and actually executed for the murder. The Prohibitory Act had been for more than three months in full force. If it abolished the laws of the land, shut up the courts of justice, and deprived his Majesty's subjects within the thirteen Colonies of the liberties and privileges of Englishmen, the whole proceedings in the above trial must have been *illegal, unauthoritative, and extrajudicial*. And if so, the question then is, whether the Governor who issued the commission of Oyer and Terminer, his Majesty's Council who advised it, the Secretary who affixed the Great Seal, the Judges who held the court, the Grand Jurors who found the bill, the Clerk of the Crown who managed the prosecution, the petty jury who convicted the criminal, the Judge who passed the sentence, and the Sheriff who put it in execution, were not all guilty of, or at least accessory to, a murder?

The Declaration of Independence, published by Congress on the 4th of July, 1776, was the first act that put an end to the courts of law, to the laws of the land, and to the administration of justice under the British Crown, within the thirteen Colonies. The revolt was now complete. Upon this event the law, the courts, and justice itself ceased, all was anarchy, all was confusion. A usurped kind of Government took place, a medley of military law, convention ordinances, Congress recommendations, and committee resolutions.

In this unhappy situation we continued until the defeat of the rebel army by General Howe, at Brookland, in August, 1776. The committees upon Long Island now surrendered, returned to their allegiance, renewed their oaths, and once more became his Majesty's loyal subjects. Instantly, all was peace and quietness,

the loyal were eased of their fears, and delivered from the tyranny of their persecutors, the disloyal repented of their crimes, and returned to their duty; and Long Island became an asylum for the Loyalists, to which they fled from all parts of the Continent for safety and protection, to avoid oppression at least, if not murder.

On the 15th of September, 1776, the rebels abandoned the city of New York. General Howe took possession of it the same day. In November, Fort Washington surrendered. This completed the reduction of York Island. Great Britain was now in possession not only of the city and county of New York, which includes the whole Island, but of the county of Richmond which includes all Staten Island, the borough of Westchester, part of the county, with Kings, Queens, and Suffolk, Counties, which comprehend the whole of Long Island. The last three were the richest counties in the province, they paid two-thirds of all the provincial taxes laid in the Colony, and contained at this time about 60,000 inhabitants, (including refugees). The courts of law should now have been opened within the several counties aforesaid. The laws of the land should have governed the whole. All power should have been vested in the civil magistrates. A general assembly should have been called, and everything put upon the same footing on which Government stood prior to the Declaration of Independence. The reasons why this was not then done, and why it was not done during the whole of the rebellion have been already given. The doctrine established, and the construction put upon the Prohibitory Act by Galloway, so favourable to the wishes of the military, so agreeable to a parcel of interested, selfish, speculating individuals, was the only reason, the only

motive, and the only inducement, which occasioned so destructive a measure.

Finding an aversion in the military, and in some leading men in civil departments, to a revival of the civil law, and though it was by no means conceived necessary, yet, to prevent all pretence of clamour, of uneasiness, or a disunion between the military and the civil powers, and to have the sanction of the Commissioners for restoring peace to the measure, the inhabitants of the city and county of New York, with those of Long Island and Staten Island, in the winter of 1776, petitioned the two brothers Howe, who were the Commissioners, "to be restored to the King's "peace." The petitions were presented by gentlemen of the first rank, fortune, character, and family, within the British lines.<sup>1</sup> The petitions were presented to Lord Howe. He received the petitioners with politeness, read the petitions, and promised to consult with his brother, Sir William, who was then with the army in New Jersey, and give an answer. *No answer was ever received, though frequently applied for.* From hence, it is a natural conjecture to suppose that a design was then formed by the Commissioners, and some other people, to govern his Majesty's subjects, wherever the conquests of the royal army extended, by the law military; and God knows, enough of it did the inhabitants within the British lines experience during the rebellion. And here it may be asked whether, supposing it was necessary (which is by no means admitted) to apply for leave to open the courts of justice

<sup>1</sup> General De Lancey and Chief Justice Horsmanden, of New York; Judge Ludlow and David Colden, with Daniel Kissam, Esq., of Queens; Benjamin Seaman and Christopher Billopp, Esq.s, of Staten Island; William Axtell, Esq., of Kings; and Richard Floyd, Benjamin Floyd, and Parker Wickham, Esq.s, of Suffolk.

and revive the civil law, and that the courts of justice, and the civil law could neither be opened nor revived, without such permission first had and obtained from the Commissioners, and further supposing (but by no means granting, admitting, or allowing) that the Prohibitory Act had abolished the laws of the land, shut up the courts of justice, and put the Colonists out of the King's protection, the Commissioners could legally refuse the petitioners the prayer of their request consistently with the act? And whether such a refusal (upon the supposition aforesaid) was not a denial of justice, a violation of the act, inconsistent with the royal intention, repugnant to the manifest design of Parliament, and an oppression upon his Majesty's loyal subjects?

It was rumoured, and I believe with truth, that the Commissioners, in conversation with favourites upon the subject of the above petitions, declared, that as to "suppressing or opening the courts of justice, or abolishing, or reviving, the civil law," they did not conceive the Prohibitory Act had any relation to them. That the act *entirely concerned the trade and commerce of the Colonies*; that a *restoration to the King's peace* mentioned in the act, meant nothing more than a *restoration to the enjoyment and privilege of that trade and commerce which the Colonists formerly possessed*, and of which by that act they were deprived; and that to permit such trade and commerce at so early a period of the rebellion, they thought, so far from being advisable, that it would be prejudicial to the King's service, and be a means of supplying the rebels with a number of articles, without which they would find it extremely difficult to support their army, or carry on their operations. These were the sentiments of the

Commissioners themselves with respect to the Prohibitory Act.

It may be here asked, why did not the judges of the Supreme Court, who understood the law, and the nature of the Prohibitory Act, open their court after the King's troops had taken possession of Staten Island, Long Island, and York Island? The answer is easy. Mr. Horsmanden, the Chief Justice, was nearly 80 years of age, and very infirm, nor had he been upon the Bench for several terms prior to the rebellion. Judge Ludlow had the Superintendency of the Court of Police of Long Island in view, and ever opposed the measure when proposed, though he never denied, when pushed upon the subject, but that it might be legally done. Judge Jones was a prisoner in New England, and so continued until the 1st of May, 1780, and, of course, could not act; and Judge Hicks was of so timid a disposition that if there was nothing else to frighten him, his own shadow would do so, besides which, he rather inclined to the rebellious side of the question. These are the plain reasons why the Supreme Court was never opened at New York during the rebellion. The Court of Common Pleas in Queens County *was opened*, upon the reduction of the Island, in 1776, and all kind of business done as before. It ceased in 1779, upon the death of the Judges. Their power to hold such court was never disputed, though the Prohibitory Act was in full force.

## CHAPTER VII.

THE campaign of 1776 being closed, General Howe established his head-quarters in the city of New York, and billeting the bulk of the army upon Staten Island, Long Island, and York Island, military law took effect, and the Commandant of the City, and the commanding officer at every post, town, and village, within the lines, took upon themselves the administration of justice, heard all complaints, tried causes, determined private property, summoned witnesses, compelled the payment of debts, levied executions, issued warrants, imprisoned, fined, flogged, and in short, played the very devil.

In this hopeful situation, things continued until the 1st of May, 1777, when General Howe, finding no steps taken by the civil magistrates to reassume the power and authority of which they had been divested by the rebel declaration of independence, by opening the courts of justice and putting the civil power in the full exercise of its original constitutional authority, and being spurred on by some of the leading military, by Barrack-masters, Quarter-masters, Commissaries, by Elliot, Matthews, the Mayor, Ludlow, and other time-serving gentlemen, who, pleased with Gallaway's con-

struction of the Prohibitory Act, with the thoughts of monopolizing all the power, influence, and authority within the lines, and amassing large fortunes, boldly took the resolution of establishing a kind of civil government; and by virtue of a proclamation, erected an arbitrary, illegal, unconstitutional, thing of a court, which he called a "Court of Police," for the trial (as the pretence was) of all causes "upon principles of "equity and justice." This was the first court of law (I believe) ever established in the dominions of Britain to govern a territory containing upwards of 60,000 inhabitants, loyal subjects, by a military officer, in virtue of a proclamation of his own. A court repugnant to the constitution of Englishmen, and contradictory to the principles of England.

At the head of this court, as its "Superintendent" (or judge), Andrew Elliot, Esq., was placed, a gentleman wholly unacquainted with the law, educated as a merchant, of very trifling abilities and a moderate share of understanding. His principal assistant was David Matthews, Esq., then Mayor of the city, a person low in estimation as a lawyer, profligate, abandoned, and dissipated, indigent, extravagant, and luxurious, over head and ears in debt, with a large family as extravagant and voluptuous as himself, and no method of supplying his wants till this "judicious" appointment. After which, with the assistance of General Howe's "legal" present of the revenues of the City Corporation, and by exercising every kind of villainy, extortion, oppression, peculation, and rapine, upon a set of loyal subjects deprived of the benefits of the law, and consequently without redress, he became before the end of the war a man of great property, lived in the style of a gentleman, gave what the mili-

tary called, "damned good dinners," wallowed in luxury, and rioted upon plunder *illegally* and *unjustly* extorted from his Majesty's loyal subjects within the lines, to whom upon every occasion he behaved with all the haughty superciliousness of a Turkish Bashaw, or a proud, overbearing, Highland Scottish Laird.

Thus was the first Court of Police established, and Elliot and Matthews made by General Howe's proclamation the judges, the guardians, the protectors, of the liberties and privileges, the estates, property, and lives, of all the people within the lines. Proper guardians truly! Not subject to the least control, accountable to no tribunal whatever for any illegal or unjust proceedings; they determined all matters without juries; nor were they even under the sanction of an oath. This court, arbitrary, illegal, and unconstitutional, as it was, possessed partial and limited powers only. It could not compel the payment of a just debt, if contracted prior to the 1st of May, 1777. The consequence of which was, innumerable hardships upon the poor, the fatherless, the widow, and the orphan. For in those unhappy days to some, and as glorious days to others, scarce a debtor was found virtuous enough to pay an honest debt when there was no law to enforce the payment. There were several instances (in consequence of this limited power) of persons being compelled to pay debts contracted after the 1st of May, 1777, to people who stood deeply indebted to them for large sums advanced upon bonds, or other specialties, prior to that day. Surely, no good, substantial reason could be given why a court of law and equity should be established with such contracted powers. Debtors in all civilized countries ought to be compelled to pay their legal debts. It was never before heard of, in

any part of the British dominions, that a General, by a proclamation of his own, could emancipate all the debtors in a Colony from the payment of their just debts because contracted prior to a certain day. But when it is considered that Matthews, the Mayor, was one of the principal contrivers of the establishment of such a court, and how suitable to his then exhausted finances such a limited, contracted, and curtailed power was, the wonder at once ceases.

Such a court as this, did not carry with it even the appearance of reason, of justice, of law, or equity. Was not a court erected with an authority thus limited a palpable piece of injustice, a real grievance to his Majesty's loyal subjects, and a manifest violation of the Laws and Constitution of England? What right had any man in the British dominions, whether a General, a Governor, or even a Prince, to deprive honest creditors by the *ipse dixit* of a proclamation from the recovery of their just and legal demands? Many thousand pounds of lawful, just, and honest debts, were lost by this arbitrary, illegal, oppressive, unjustifiable, measure, to just, honest, and *bona fide* creditors, who were absolutely barred by Howe's proclamation from suing for the recovery of their demands, because contracted prior to a certain day. These Courts of Police, which at least consisted of four, had, as the proclamations establishing them asserted, a power to try all causes upon "*principles of justice and equity*," and yet were restricted from taking cognizance of any complaints, causes, or actions, which arose before the 1st of May, 1777. Pray, was there either justice or equity in this? If any judgment was to be formed from the conduct of these courts, they had no power or jurisdiction over the military, for no debt could be

recovered, no complaint heard, nor any grievance redressed, which was due from, committed by, the military, or agitated between the military and the inhabitants. If the latter were plundered, robbed, pillaged, beaten, abused, insulted, kicked, or even imprisoned, (instances of which were almost innumerable) these Police Courts would take no notice of them, nor listen to any complaints of such a kind. They held their power, and derived their authority, from the military. A General's or a Governor's proclamation had established them, and a General's or Governor's proclamation could abolish them. Hence debts contracted by the military were seldom or never paid, trespassers went unpunished, and plunderers and pillagers, breakers of the law, and prisoners of the person, went unnoticed; they acted openly, and committed such offences with impunity. The Courts of Police being established by the military, were under the immediate influence of the army, and dared not act in, nor do, a single thing, which they conceived would be disagreeable to the troops. They were the mere badges of arbitrary power, were governed by the nod of the military, and not by the laws of the land.

By way of digression. It is surprising that so honest, so good, so just, so kind a man, and one so attached to the unhappy Loyalists of America, as Sir Guy Carleton, should have made General Howe's proclamation a precedent for his conduct. When Lord Shelburne patched up a peace and gave away the 13 Colonies, Sir Guy commanded in America. By one article, New York was to be evacuated "as soon as possible." Numbers within the lines had, by an act of the rebel Legislature of the Colony of New York, been attainted of high treason for '*adhering to*

*"the cause of their Sovereign,"* and their estates were by said act confiscated. No provision by the Earl's peace was made for these unhappy Loyalists. The moment New York should be evacuated, the attainted had not the least prospect of recovering a single debt. They were outlawed, and proscribed, and if ever thereafter found within the State, were to suffer the pains and penalties of death without benefit of clergy. They could therefore by no means stay behind. Many of them were inhabitants within the lines, and persons of family, fortune, and opulence, and had considerable sums due to them from substantial free-holders also within the lines. The creditors applied to the General, stated their case, and were referred to a Board of Commissioners, which he had authorized to liquidate, and compel the payment of, all debts due to such loyalists as were under a necessity of leaving New York upon its evacuation. Upon application to this Board, strange to relate! its powers were also confined to debts contracted after the 1st of May, 1776. So that every attainted loyalist lost all the moneys due to him within the British lines contracted prior to that period. General Howe's proclamation was made the precedent, but how different the circumstances? When Howe issued his proclamation<sup>1</sup> the rebellion was supposed to be at death's door, and upon its demise the courts of civil law would all instantly open, and redress was to be had. When Sir Guy established his Board of Commissioners the country was given away. His orders were positively to abandon New York as soon as possible. How different then were the two cases. Another thing remarkable in Sir Guy's commission was, "that the Commissioners had no

<sup>1</sup>This I had from Daniel Cox, and Isaac Low, two of the Board.

"power to compel the payment of a debt secured by a "mortgage," though the money was advanced and the mortgage executed after the first of May, 1776, though due to attainted Loyalists, who were by the rebel laws, as soon as the evacuation took place, totally deprived from ever recovering a single sixpence of their just debts. William Smith was Sir Guy's adviser. Sir Guy was not over-burdened with legal knowledge, and Smith hated Loyalists.

The advocates in favor of the arbitrary power established by the military, insisted that the Prohibitory Act had deprived the Colonists of the benefit of the laws, put them out of their Sovereign's protection, shut up the courts of justice, abolished the laws of the land, and that the lives, liberty, and estates, of the inhabitants, were held, in consequence of that Act, at the will, the pleasure, and the mercy, of the Crown.<sup>1</sup> Notwithstanding these pretences, it shall now be shown, and from a deduction of facts made to appear, that these were pretences, and mere pretences only, and that the laws, customs, and charters, were by these very people construed in such a manner as to serve the particular purposes of themselves, their friends, and favourites. To begin then. The city charter was said to be void, the Common Council was therefore not permitted the management of the city revenues, the

<sup>1</sup>I was present in 1778, and heard a Governor declare "that when the war was over (which no Loyalist but then supposed would terminate in favour of Great Britain) it would be necessary for every freeholder to take out a new patent for his real estate." Had Britain succeeded and this measure been enforced, the fees of the Governor of New York, the Surveyor-General, the Secretary of the province, and the Attorney-General, upon the passing of such patents, would have amounted, at least, to the amazing sum of one million and a half of money. This doctrine was universally propagated, but had not the least effect towards a conciliation, but its effect was directly the reverse. It strengthened rebellion. It weakened the interest of Great Britain in the Colonies.

receipt of their rents, issues, and profits, nor the payment of the honest, just, and legal, debts of the corporation. On the contrary, the revenues of this public body were sequestered by an order from Governor Robertson, and directed to be paid into the "City funds." And yet, the fees upon all licenses to cartmen, and retailers of strong liquors, within the city, which appertained to, and were the perquisites of, the Mayor, he was allowed to receive, because he was, as it was then said, "entitled to them under the charter." By this system of politics, the city charter as to its revenues was absolutely void. But as to the perquisites arising from the granting of licenses to cartmen, and retailers of strong liquors, and as to the fees and emoluments appertaining to offices of Clerk of the Market, and water bailiff, (being perquisites of the Mayor), the charter was allowed to be in full force, and he actually continued in the receipt of them during the whole war. The corporation laws made in virtue of the city charter were allowed to be in force, while those which related to paving and mending the streets, were declared to be void. One Hill, a refugee from Boston, was commissioned to superintend this business. No citizen was suffered to procure pavers, or to pave, or mend, the street before his own door, and oversee the same himself, (agreeably to the laws of the corporation) but all the workmen were upon these occasions, by the General's orders, procured by this Hill, and he, or his deputy, acted as overseer of the work, for which he charged 20 shillings a day, and 16 shillings for each labourer, while the proprietors (had they been permitted) could have procured pavers for 12 shillings a day, and saved the 20 shillings by overseeing the work themselves. This was a lucrative office. Hill

had always people at work. Common fame said he paid well for the appointment. He held it under a commission from the Commandant of the city, confirmed by the Governor, the Mayor, and the Commander-in-Chief. A good title, at least in days of military despotism.

The Aldermen of the city of New York, who were by the charter Justices of the Peace, *had no power left*. The Recorder, who held his commission by letters patent under the Crown, in consequence of the charter, *had no power left*. The Common Councilmen, who by the charter were entrusted with the management of the city revenues, *had no power left*. But the Mayor, who was appointed under the same charter, *remained in full possession of every power and authority appertaining to his office*, (those of calling Common Councils and holding legal courts of law under the charter excepted). He signed all public papers as Mayor, granted certificates under his seal of office, swore witnesses, authenticated affidavits, took the acknowledgments of deeds, powers of attorney, mortgages, &c. And here it may be asked with propriety, why a part only of the Mayor's power under the charter was gone, and not the rest? And why the Recorder, the Aldermen, and Common Councilmen, were deprived of all theirs, while the Mayor continued in the possession of all that authority under the charter, which made the office profitable, and entitled him to high fees and large emoluments?<sup>1</sup>

The law for "regulating the Ministry and maintaining the poor, &c.," was in full force in New York "as to the poor;" churchwardens and vestrymen were

<sup>1</sup> He charged four times as much as the laws or ordinances allowed prior to the rebellion.

annually chosen according to its directions; but I suppose void "as to the rector's salary," as he never was paid a farthing. The Loan Office Act was in force in New York for more than three years after the King's troops possessed it; cash was received, put out at interest, mortgages foreclosed, estates sold, and deeds executed. How this law came to be in force for three years after the royal army entered New York, and instantly upon the removal of General Tryon, and the promotion of General Robertson to the government, null and void, would puzzle an able counsellor to tell. Yet such was the fact.

This same act continued *in force* in Queens County during the whole of the war. Interest money was paid, part of the principal discharged, and put out again, according to the directions of the act. Mortgages were taken, foreclosed, estates sold, deeds executed, cash received, and appropriated, as directed by the act, in as regular a manner as before the rebellion. Yet, strange to tell, in Richmond, Suffolk, and Kings, it seems this act *was void*, and the offices shut up. How are these facts to be accounted for, and facts they most certainly are, if the Prohibitory Act took away the property, real and personal, the laws, liberties, privileges, courts, and charters, of the Americans? It must have taken them away in *toto*, and not in part. But to serve particular purposes it was so construed, by Governor Robertson, the Officers of the Courts of Police, Mr. Bayard the Secretary, and Mr. Philip John Livingston the Manager and Superintendent of rebel estates.

The Ministry Act also continued in force in Queens County. The ministers and poor tax, was every year assessed, collected, and properly appropriated. The

town meetings were annually held in each town, and all the necessary officers chosen, qualified in the customary manner, and acted in their respective stations as town officers. In Richmond this same act was said to be void. And, as has been already mentioned, (surprising as it is) one half of this law was allowed to be in force in New York, while the other half (it seems) was absolutely void.

The acts of the Legislature, empowering Justices of the Peace to try petty larcenies, remained in force upon Long Island, but in civil causes, of which they had cognizance by their commissions, and the laws of the province, they were forbid acting. But in New York, and in the county of Richmond, the Justices were not suffered to act in any shape whatever, in their judicial capacities, nor in their ministerial, unless to press horses and wagons for the use of the Commissaries, Quarter-masters, and Barrack-masters. They were then always called upon. The inhabitants upon Long Island were also *indulged* with this power.

These instances fully show the inconsistent conduct of the people in power within the British lines during the war. Had the civil law been in force, and the courts of justice open, his Majesty's loyal subjects residing upon Long Island, Staten Island, York Island, and that part of Westchester County within the British lines, consisting of the Borough of Westchester, the Manors of Morrisania, and Fordham, with the lower Yonkers, amounting to more than 60,000 souls, would have been relieved and extricated out of that state of uncertainty, perplexity, and confusion, in which they were perpetually involved during the rebellion for want of knowing what was, and what was not, law. And for not knowing this, they were constantly entrapped

and imposed upon by the arbitrary constructions and decisions of the Commander-in-Chief, the Governor, the Commandant of the City, the Mayor, the officers of the Courts of Police, the Provincial Secretary, and the Manager of rebel estates. It would also have been the means of putting a stop to those amazing fees, or rather exactions, which were (for want of law to punish the culprits) extorted from the inhabitants by the Mayor, the Provincial Secretary, the Commandant of the City, &c., &c., &c. No wonder the civil law was not suffered to take effect, as by such a step all plunder, peculation, and extortion, would have been at an end, and every plunderer, peculator, and extortioner, (if convicted by his peers) properly and exemplarily punished.

The acts of Assembly, empowering Justices of the Peace to try petty larcenies, and punish the guilty, continued in force, and was executed, in Queens County, to the satisfaction of the inhabitants, from the surrender of Long Island, in August, 1776, until June, 1780, when Governor Robertson, (to please Judge Ludlow) by the hocus pocus of a proclamation, (the sovereign then, of all laws within the British lines) abolished this power in the justices and placed it in a "Court of "Police," of which Ludlow was made the "Superintendent;" a court unconstitutional in its formation, unknown to the laws of England, to the laws of the Colony, and incompatible with the liberties of a free people. In a word, by the "ipse dixit" of the Governor, this valuable privilege was wrested from those in whom the constitution of Britain and the laws of the province had placed it, who were the sworn guardians of the rights and liberties of the subjects, and as such, commissioned by his Majesty, and deriving their

authority in consequence of letters patent from their Sovereign, under the great seal of the Colony, and put into the hands, and under the jurisdiction, of an arbitrary, illegal, unconstitutional Court of Police, a court unknown to the constitution of England, and the powers exercised by persons not even under the sanction of an oath. I fancy the subjects of Great Britain never before heard of courts erected in his Majesty's dominions by the proclamation of a Governor, or a General, with full power to try and determine, without a jury, and by judges not sworn, all civil causes and controversies, and criminal ones under the degree of grand larceny, with authority to commit, try, and punish, such offenders. No power was vested in these courts for the trial of traitors, rebels, pirates, murderers, burglars, or other capital offenders. What was to be done with such culprits as these? Were they to run at large? Or if committed, were they to lie in jail until the courts of civil law were opened? Or were they to be tried by court martial, and the law military? It may be here further asked, who had a power "to commit," that is, legally, "to commit" such criminals but the civil magistrate? And what courts had a power "to try," that is, "legally to try," such offenders, but the courts of common law? I should be glad to know whether every commitment of a criminal, and every transaction done under such a power by such judges of such courts was not illegal, arbitrary, and unconstitutional; contrary to law, justice, equity, and reason; an infringement upon the constitution, a violation of the laws of the land, and actionable? And whether ample damages might not for such acts (had the war terminated in favour of Britain, the loyal courts of justice opened, the laws of the land revived, the civil magistrates in possession of

their constitutional power, and law, justice, and equity once more administered in the old legal way) have been recovered with full costs of suit?

Let it be now again, once more considered, how the law came to be abolished, and the courts of justice shut up. I hope it has already satisfactorily appeared that the Prohibitory Act neither abolished the law, nor shut up the civil law courts, nor deprived his Majesty's loyal subjects within the thirteen colonies of their liberties and privileges (a restriction upon their trade and commerce excepted). I am told the law never dies, neither do the courts of justice. Did the rebellions in 1715, and 1745, in Scotland, abolish or suspend the law, and shut up the courts of justice in that kingdom? They did not. Did the great rebellion in England in the reign of Charles the First, which brought that unfortunate monarch to the block, and finally put an end to the constitution, shut up the courts of justice in that kingdom, or deprive the inhabitants of the laws of the land? No. The laws were always, during those unhappy days, in full force, and the courts of justice open. The laws (it is true) were exercised, and the courts held, sometimes under one party, sometimes under the other, and sometimes under both. The King had a Parliament sitting and doing business at Oxford, while the Long Parliament (as it is commonly called) was sitting and doing business in London. The courts of King's Bench, Common Pleas, and Exchequer, were held at Oxford under the King, while the same courts were held at Westminster under the Parliament. Yet in all this confusion the people knew where to resort for justice. The laws were still in force, and the courts of civil law (as usual) open. If the rebellions in 1715, and 1745, did not abolish the law and shut up the courts

of justice in Scotland, and if the grand English rebellion had no such effect upon the laws and courts in England, what reasons can be given why an American rebellion deprived above 60,000 loyal subjects, living within the British lines, under his Majesty's immediate jurisdiction, and protection, of those laws and those courts to which they, as British subjects, were by the English constitution legally entitled?

The Prohibitory Act, it is manifest, did not deprive, nor ever was intended to deprive, his Majesty's subjects of the laws of the land, the courts of justice, or the liberties and privileges of Englishmen (a restriction upon their trade and commerce excepted). But the military gentlemen, the Governor, the Mayor, the Courts of Police, the Secretary, and Manager of rebel estates, with some other arbitrary, tyrannical, time-serving, peculating, money-getting, gentry, boldly advanced (when fairly driven out of their fort under the Prohibitory Act), that *New York was a garrison*, and that *no law could exist in a garrison but military and martial law*. The fact I deny, and join issue with the Junto. New York was no more a garrison than Portsmouth, or Plymouth, Chatham, or Woolwich, in England, are garrisons. What makes a garrison? Is it because a Commander-in-Chief, Generals, officers, and soldiers are quartered in it? If so, then New York was a garrison during the whole of the war that preceded the American rebellion. We had then a Commander in-Chief in the city every winter, and frequently 10,000 troops. And from the peace of 1760, to the year 1775, there was always a regiment, and a corps of artillery, quartered in the city. The laws were, nevertheless, in full force, and the courts of justice open. Nor were they ever shut till the rebel Congress declared themselves independ-

ent of Great Britain in July, 1776. The rebels themselves, prior to the declaration of independence, never disputed this point. The city of New York was first taken possession of by General Lee, in February, 1776. In March, General Washington came from Boston with the greatest part of the rebel army. There were then in the city not less than 40,000 rebel soldiers. No attempts were made to shut up the courts of justice. The laws were in full force, and the magistrates (though holding their commissions under the Crown) in such full possession of their authority, that in April term, 1776, several rebel soldiers were indicted for petty larcenies, committed, brought to the bar, arraigned, pleaded, and tried in the Supreme Court, then sitting as a legal, established, court of record under the jurisdiction of Great Britain. Thomas Jones, Esq., was the only judge upon the Bench. The court continued eleven days, and met with no interruption whatever. The rebel soldiers that were tried, were convicted, and sentenced to the whipping-post. The officers of the regiments to whom the soldiers belonged, attended the court during the trials, paid the utmost respect to the judge, acknowledged the impartiality of the court, and declared that the criminals had ample justice done them, that they were fairly convicted, and justly punished.

New York was no more a garrison than the towns in England, Scotland, and Ireland, commonly called garrison towns, are. New York was an old, ancient city, incorporated by a royal charter from his late Majesty, George the First, in 1730, that charter confirmed by an act of the General Assembly of the province, and the provincial act solemnly ratified, and confirmed by the Crown. By the charter, law, and

confirmation, the citizens had granted to them certain privileges, liberties, franchises, emoluments, lands, tenements, and hereditaments, of which they could not be legally deprived without sufficient cause, founded upon good grounds, and just, substantial reasons ; and such cause, founded as aforesaid, must have been made fully and clearly to appear in a *legal* court of law, before *legal* sworn judges, and a *legal* conviction must have taken place ; and that, in consequence of a verdict unanimously given by an honest, *legal*, jury of twelve men upon oath. Until this was done, no *legal* disfranchisement could by any means justly and honestly take place.

The city of New York was, during the rebellion, filled with inhabitants, freeholders, citizens, natives, denizens, and merchants, from every part of the British dominions, as well as soldiers. The former ought to have enjoyed the laws of the land, with all the liberties and privileges of Englishmen. The latter should have been governed, tried, and punished by the law military, so far as the mutiny act and the articles of war give an authority, and no further. But the whole ought to have been subject to, and punishable in, the courts of law. The civil power, by the constitution of England, being ever superior to that of the military.

New York being incorporated, as already mentioned, and governed by a Mayor, a Recorder, seven Aldermen, and seven Common Councilmen, the corporation could not be divested nor dispossessed of its powers, nor deprived of its privileges, its emoluments, or revenues, by any act of treason by them, or any, or either, of them, committed. Such treason would, upon a conviction duly and legally had, subject their lives to the mercy of the Crown, and their private property, as

individuals and subjects, to forfeiture and confiscation. But they could not commit treason in their political capacity. They might do certain acts in that capacity which might amount to a forfeiture of a charter; but then, a quo warranto must be brought, the acts proved, a legal conviction had, a judgment upon such conviction given, and all this in a legal court of law, founded upon the verdict of a jury, before such forfeiture could take place, or the corporation be deprived of its liberties, privileges, immunities, emoluments, and revenues. Nothing of this kind ever happened. The royal charter, therefore, remained in full force. This being the case, I do aver, that no General, nor Governor, whatever, had a right to abolish the law, shut up the courts of justice, declare the city a garrison, exercise military law, and establish arbitrary, illegal, courts of police, for the administration of justice within the limits and jurisdiction of the city.

The limits, jurisdiction, and boundaries of the city, are particularly described in the charter, as are those of a certain spot of ground comprehended within the city boundaries, (though not included in the grant) and expressly reserved for a garrison wherein military law (as far as the mutiny act and the articles of war give a power) was to govern. The land reserved for this use contains all the ground upon which the remains of Fort George stand, all the ground included in the fort gardens, with the ground on which Copsy Battery, the lower barracks, Blundel's house, the Secretary's office, and the stables out of the fort, stand, together with the parade before the fort gate. Here the King's writs did not run, here the corporation had no power, here the courts of law had no jurisdiction. This ground, and this only, did the Crown reserve, upon granting a

charter, for a garrison. This explains what the Crown meant at that time by a garrison in New York, a privileged place for soldiers, a place where military law was to govern, and trials take place by courts martial. Yet even in a place privileged like this, (under the British government) should treason, murder, or a capital felony be committed, the criminal must be delivered up to the civil power for trial, no court martial having power or being competent to, the trial of such offences. The royal grantor certainly never intended that the whole city, as described in the charter, should ever be reduced to a garrison, and the inhabitants subjected to military law, as long, at least, as the grant remained in force, and neither surrendered nor forfeited. Notwithstanding which, the citizens have seen a General and a Governor, of a most gracious Sovereign, the lover and protector of his subjects, the immediate descendant of that very King under whom they derived all these liberties and privileges, not only declare the whole city a garrison, and shut up the courts granted by the charter, but deprive them of all their franchises, establish military law, and sequester the revenues of the corporation, without a trial, a hearing, or the shadow of a reason. This was actually done, and let Sir William Howe, Sir Henry Clinton, Governor Robertson, the Courts of Police, Matthews the Mayor, Bayard the Secretary, Livingston the Manager of rebel estates, or any other person employed by Britain in America, deny it if they can.

Among other privileges granted to the corporation by their charter, that of holding a Court of Record once a month for the trial of civil causes, another once a quarter for the trial of criminal offences under the degree of grand larceny, as well as all causes cogni-

zable before Justices of the Peace, the Mayor, Recorder, and Aldermen, being such by the charter. By what power or authority General Howe, General Clinton, or Governor Robertson, abolished these courts expressly granted by the King under the great seal, and substituted new ones in their stead, unknown to the constitution, or to the laws of the land, must be best known to themselves. No Englishman will ever believe it was by his Majesty's order. What right had they or either of them to give away to favourites, or to sequester to their own use, the revenues of the city? Could they, had they been called upon by their royal master, account for such illegal and arbitrary proceedings?

A town wherein troops are constantly stationed, and defended by fortifications, is generally called a garrison town. Portsmouth in England is so called. But the garrison consists only of the soldiers who occupy the fortifications, and quarter in the barracks. There are a number of towns and cities in England, Scotland, and Ireland, called garrison towns. But do these garrisons extend for 20 miles around each town? Or are the inhabitants within such towns, the citizens and merchants, governed by the law military, subject to the penalties contained in the mutiny act, and articles of war, or by courts established by the proclamation of the military Commanders of such garrison towns? Are the inhabitants deprived of the laws of the land? Are the courts of justice shut up? Nothing like it. In all the garrison towns in Great Britain and Ireland, the civil magistrates are invested with their full power, the courts of justice are open, the laws in force, and the military amenable to these laws. New York ought to have been considered no more a garrison, than

Portsmouth, or any other town in Great Britain. The General should have commanded the troops, held court martials, and punished the military, as far as the mutiny act and the articles of war permitted, not an inch further. The inhabitants ought to have been governed by the laws of the land, the courts of justice ought to have been open for the execution of those laws, and to the civil power, the military ought to have been, as it constitutionally is, subordinate. If the city of New York, including all its inhabitants, residents, and merchants, with thousands of refugees, could be construed into a garrison, and the whole subject to military law (a construction inconsistent with, and repugnant to, reason, common sense, and justice,) pray let it be asked, by what rule the whole island of New York, 14 miles in length and three in breadth, the whole of Staten Island, 50 miles in circumference, all Long Island, 140 miles in length and 15 to 18 in width, the borough of Westchester, the manors of Morrisania, and Fordham, with the lower Yonkers, containing above 60,000 loyal inhabitants, could be made a part of the "garrison," and the whole subject to military law, and arbitrary Courts of Police, deprived of the courts of justice, and of the laws of the land?

Gibraltar is a garrison. It was taken from the Spaniards, and has been ever governed by the military power. Great Britain has nothing but the rock on which the fortifications stand. This is a proper garrison, in the legal sense of the word. No law ever governed there but the military law. This was well known to those merchants who settled there for the sake of trade. They settled with their eyes open, they knew there was no other law in the garrison. But pray was this the case with respect to New York,

Staten Island, Long Island, the borough of Westchester, Morrisania, Fordham, and the lower Yonkers? It was not.

Fort St. Philip, in the Island of Minorca, was a garrison while in the power of Britain. But then the garrison was confined to the fort, and the adjoining fortifications. The military had nothing to do with the Minorquins, or the English settlers upon the island. They were governed by the original laws of Minorca, absolutely and totally independent of the military power which existed in the fortifications only. Of this General Mostyn had a convincing proof. When Governor of St. Philip, he, by his sole will and authority took up, and imprisoned, one Fabricius, a native of the island, confined him for several days, then banished him the island, and transported him to Spain. When the Governor returned to England, Fabricius followed, and brought his action for the injury done him. And though he was only a common Minorquin merchant, a stranger in England, and Mostyn, not only nobly allied, a Lieut.-General in the army, and Governor of Minorca, but amazingly rich, with large, opulent, and powerful connections, yet an English jury did ample justice to the injured stranger, and gave him large damages, with full costs of suit. This fact, which is well known, evidently shows that the military have no power, wherever they are stationed, over the inhabitants not actually residing within the fortifications. They have nothing to do with the citizens or the inhabitants, dwelling in the country adjacent. That their power is entirely confined to the soldiery, and that they have no legal power to punish in any other manner than the military act, and the articles of war direct, all other offences committed by the military

being only cognizable in the courts of law. The military power by the Constitution and laws of England are subordinate to that of the civil, and I hope yet to see actions agitated in Westminster Hall against certain field officers, Barrack-masters, Quarter-masters, and Commissaries, for the illegal acts committed by them during the American war upon his Majesty's loyal subjects within the lines, the culprits properly punished, and compelled to disgorge those amazing sums, which were extorted by every kind of oppression that avarice could suggest, or power execute.

## CHAPTER VIII.

HAVING mentioned "the City funds," they must now be explained, in what manner raised, their annual amount, and reputed appropriation

|   |                         |
|---|-------------------------|
| There was raised upon the Island of New York, the whole of which forms the city, from the rents of rebel estates, lotteries, and an excise upon strong liquors, annually about.....                                   | <i>L.</i> s. d.         |
|   | 14,000   0   0          |
| There was also lodged in these funds by order of General Robertson, after he obtained the Government of the province, in April, 1780, the ordinary revenues of the city corporation, amounting annually to about..... | 6,000   0   0           |
| There was raised upon Staten Island, and Long Island, from the rents of rebel estates, and an excise upon strong liquors, and lodged in these funds annually, about.....  | 10,000   0   0          |
|   | <i>L</i> 30,000   0   0 |

This was the most accurate amount I was able to obtain, after the strictest inquiry from intelligent persons of the utmost veracity. The reader now sees what was meant by "the City funds," of what they consisted, and their annual amount. The methods which were taken to raise these funds shall be next

considered, and the manner in which, if fame speaks truth, they were applied.

Governor Robertson, upon his arrival from England as Governor of the Province, asserted that he had an order from the Ministry to seize upon all the rebel estates within the British lines, to rent them out for the benefit of, or to accommodate with them, the refugees, so as to make those unfortunate people comfortable without being a charge upon Government. Whether such an order was legal or not, or whether Governor Robertson had a power by such order, legally, either by himself, his Deputy, or his Courts of Police, to take cognizance of, and determine which were rebel estates and which were not? Or which estates were forfeited and which not? Or which belonged to loyal subjects living out of the British lines, or to persons in rebellion, shall not at this time be particularly inquired into. I have, however, been told by gentlemen of the law, that the King having once granted away the Crown Lands, he can never be re-seized of such lands again, unless they escheat for want of heirs, or become forfeited in consequence of some treason or felony committed by the grantees, or those claiming under them. That in the first case, "the death without heirs" must be found by an inquisition taken before a Crown Officer, called "an Escheat" "or," upon the oaths of twenty-four freeholders living in the vicinity; that such inquisition so found must be certified under the hands and seals of the officer and jurors, and returned into Chancery before the King can make a new grant, or even give a lease, or put a person in possession of the lands so escheated. That, in the second case, the persons charged with treason or felony must be arrested, brought into Court, indicted

by a grand jury, plead, and have a legal trial before sworn Judges in a legal Court of law, and be legally convicted upon the solemn oaths of twelve honest men. If a conviction takes place in this manner, the land of the person so convicted belongs to the Crown, and may be re-granted. But until such conviction is had, neither the King, the Attorney-General, nor any other Crown Officer, can legally meddle with such lands, or touch, or appropriate, the rents, issues, and profits, thereof, in any manner, shape, or form, whatever. Or if the persons charged with treason abscond, quit the realm, fly into foreign parts, refuse to return and stand a trial, such persons may be attainted, and their estates confiscated. In which case also nobody has a right to intermeddle with such estates until such attainder takes place.

This attainder, in England must be by an act of Parliament, in an English Colony, by act of the General Assembly. Was this ever the case during the American rebellion? No! Was there a single person who had an estate within the British lines, and said to be in rebellion, ever legally convicted of treason in a legal Court of law, before legal judges, upon the oaths of twelve honest jurors? No! Were any persons charged with being in open rebellion against their Sovereign, whose estates lay within the lines, ever attainted, and their estates confiscated by an act of Assembly? No! Or by any act of Parliament? No! No legal convictions having therefore ever taken place, nor acts of attainder passed against persons in rebellion, how could their estates be legally seized upon, rented out, and the moneys arising therefrom lodged in the city funds, and appropriated, as the Commander-in-Chief, Governor Robertson, the Com-

dant of the City, or the Manager of rebel estates thought proper? That the King, by the laws and constitution of England, could not sanction nor countenance such illegal acts is certain. If the Ministry ordered this of their own heads, they did an illegal act, an unjustifiable, arbitrary, unconstitutional act. If the Commander-in-Chief, or Governor Robertson, did this without orders, they ought to have been severely punished for so unrighteous and wicked an act. Were there not numbers who had been in rebellion, fully and absolutely pardoned by the Commissioners' proclamation of October, 1776, by strictly, honestly, and zealously, conforming to the tenor thereof? Ought such persons, persons pardoned by Commissioners, in consequence of an act of Parliament, and a Commission—a royal Commission under the Great Seal of Britain—authorizing them to grant such pardons, to have their estates taken from them, in manifest violation of the public faith pledged in the proclamation aforesaid? The Commissioners had a power to grant such pardons. They did it by their proclamation, and what right had Governor Robertson to dispute the powers of Parliament, the authority of the Crown, or the validity of the powers granted to the Commissioners acting under such authority, by seizing upon every estate within the lines which he, or Mr. Philip John Livingston, the Manager, thought proper to call "rebel" "property," to dispossess the possessors, hire them out, and clap the rents into his "city funds"? Were there not many, of as loyal subjects as the King ever had, who possessed estates, as well within the rebel as within the British lines, and who, when the royal army took possession of Staten Island, Long Island, and New York, were upon their estates in the country? Had they aban-

doned them and gone to New York the rebels would have seized upon them, sequestered, and confiscated them. Are such subjects to be blamed? This remaining on these estates, however, was a sufficient pretence for Governor Robertson to lay violent hands upon their estates within the British lines for the use and advantage of his "city funds." Was it right, was it just, was it honest, to appropriate the rents arising from the estates of persons in this predicament to any other use than that of the loyal owners? Yes, said the Commander-in-Chief. Yes, said Governor Robertson, the Commandant of the City, the Mayor, the Courts of Police, and Livingston the Manager of rebel estates. But no, said law, justice, honesty, equity, policy, and common sense. The affirmative was held by the Commander-in-Chief, the Governor, the Commandant of the City, the Mayor, the Courts of Police, and the Manager of rebel estates, for either of them had at that time, more influence, interest, and power, within the British lines than law, justice, honesty, equity, policy, and common sense, all put together. The estates were, of course, all seized upon, hired out, and the rents went into "the city funds."

That there were many people in rebellion who had estates within the British lines during the war, shall by no means be denied. But that any person had legally a right to seize upon such estates, hire them out, receive the rents, and appropriate them to any other use than that of the *legal* owner, before a *legal* conviction in a court of law was had, or a *legal* attainer, by an act of the Assembly, or of the Parliament of Great Britain, was passed for the purpose, is absolutely denied. It may be asked, what was to be done with such estates? Were they to lie unimproved, unten-

anted, and at the will, pleasure, and destruction, of those who should think proper to enter? The answer is, by no means. The Governor, or the Commander-in-Chief, ought to have appointed a proper person to superintend such estates, who should have had power to have hired them out upon the best terms, the lessees being bound to commit neither waste nor destruction in the lands or houses. For this he should have had a proper salary, payable out of the rents. The residue should have been put into the hands of a treasurer, giving ample security for the faithful discharge of his duty, and at the end of the war the cash should have been paid to the real proprietors, who were ever loyal, or pardoned by the Commissioners' proclamation of October, 1778. This would have been honest, and this would have been fair and equitable. A contrary conduct, was, however, pursued. All such estates were rented without distinction, the Loyalist suffered equally with the rebel. The moneys arising were paid into the city funds, and appropriated in such manner as the Governor, and the Commandant of the City, with a few others, thought proper. This was most certainly illegal, arbitrary, and unjust; contrary to law, justice, and equity, and a flagrant violation of the public faith, most solemnly pledged, in the proclamation of the Commissioners above mentioned, to persons who had been in rebellion and had taken the benefit thereof.

Suppose Great Britain had succeeded in the dispute, would not a loyal subject, or a pardoned one, have had his remedy in a legal court of law against the occupier of his house or farm, and recovered his damages? And whether the plea of the occupant, that he paid the rent into the city funds by order of the Commander-in-Chief, Governor Robertson, the Commandant of

the City, the Mayor, the Courts of Police, the Manager of rebel estates, or even from Lord George Germaine, (from whom Robertson pretended to have received the order) would have availed in a legal constitutional court of justice ?<sup>1</sup>

Having thus considered that part of the city funds which arose from the rents of farms and houses said to be the property of rebels, and proved, I hope, the illegality of such iniquitous, unjust, irregular, arbitrary proceedings, and pointed out a plain and easy method in which such estates, and the rents thereof, ought to have been treated and applied ; the ways and means by which the residue of the money appropriated to the use of the city funds was raised, shall be now adverted to. In the first place, by making private lotteries to raise money for the poor unhappy refugees. These lotteries were formed with the permission of the Governor and the Commandant of the City. The moneys arising were deposited in the city funds. To increase which, the Governor and Commandant assumed and

<sup>1</sup> Upon the first notice of the provisional articles of peace being signed, the Legislature of New York passed an act called the "Trespass Act," by which every person who occupied a house or farm within the lines, the property of a person without the lines, during the war, was enabled to recover the whole annual rent from any one who had ever lived in such house, or upon such farm, for even three days during the war, and to recover full damages for trespasses committed upon such farms against any person who would be proved to have cut down or carried away a single tree during the war. A very extraordinary act this ; an act made after the peace, of which the State of New York had full notice before it passed. In consequence of this act, many an honest, inoffensive Loyalist has suffered most amazingly, and been obliged to pay for rents pocketed by Robertson, and for wood cut down for the use of the army, by the orders of Barrack-masters, Quarter-masters, Commissaries, Engineers, and Governors. One of the provisional articles of the peace was, "that no person should be injured, hurt, molested, or damaged for anything done or transacted during the war." This, the New York Legislature were well acquainted with when they passed the act. It was a scheme designed to injure the Loyalists. It had its effects. Great Britain never resented the offence, nor remonstrated against this infraction of a solemn treaty.

exercised a dispensing power, a power of dispensing with the laws of the Colony. All private lotteries, those not allowed by an act of Assembly, are by a law of the province declared void, nuisances, indictable, and the moneys won in such lotteries irrecoverable in any court whatever. This act was well considered, nor was it passed without the utmost deliberation. Its intent was to prevent gambling, to save the poor from being ruined, and to prevent clerks, servants, and apprentices, from peculation, idleness, and dissipation. It effectually answered the purpose. It had the unanimous approbation of the three branches of the Legislature. It was solemnly ratified and confirmed by the Crown. This act was, by the Governor and Commandant, dispensed with. They gave permission to individuals to set on foot lotteries, in direct opposition to, and in violation and contempt of, the act before mentioned. The money, however, when raised, was all lodged in the city funds. The Governor and the Commandant were the principal appropriators of the money in these funds, the former as avaricious, as the latter was prodigal and extravagant. The King of England has no dispensing power. The Stuarts contended for it. The people ever opposed it. Upon the revolution, when James the Second abdicated the Crown, it was finally given up. If the King has not this power in England, pray, how came the Governor and Commandant with it in New York? Did they not derive all their power and authority from the Crown? And is it not preposterous to suppose that the King could delegate a power which he was not vested with himself? The pretence is idle, absurd, and ridiculous. If the Governor had looked into his "Commission" and "Instructions," he would have

found no such power there. On the contrary, he would have found absolute and positive injunctions to govern the people within his jurisdiction according to the laws of England, and of the province of which he was made Governor. To this purpose a solemn oath is taken upon the qualification of every Governor. Robertson was qualified. The oath was swallowed. But as Hudibras says,

"Oaths go for nothing when they are took,  
"But mere saluting of the Book."

Birch's commission, as Commandant of the City, could have nothing to do with this matter. He received it from the Commander-in-Chief, who could never vest a power in an inferior officer which his own commission by no means gave to himself. As to the military commissions of the two gentlemen, they related only to the management and direction of soldiers. They gave them no power over the inhabitants, no power to dispense with the laws of the Colony, nor to act in contradiction thereto. Yet, this they openly and publicly did, in opposition to all legal power, by dint of an assumed, illegal, unconstitutional one, not warranted by their commissions, and repugnant to the laws and constitution of England, as well as to those of the Colony. Ought not such tyrants for such iniquitous actions to have been severely punished? This was the wish of every inhabitant within the lines during the war. The war is now at an end. An inglorious peace has put an end to an inglorious war. Prosecutions may, however, still be commenced against the iniquitous, unjust, arbitrary, and illegal, proceedings of the military while in America. Westminster Hall is

ever open to redress the grievances of his Majesty's loyal subjects.

Another method of supplying these funds, as appears by the preceding statement, was by an excise upon all strong liquors retailed within the lines. This is what Englishmen, as well as Americans, call a tax; and this tax was imposed upon the subject by the Courts of Police, by an order from the Governor. Pray what right had Robertson, or his Courts of Police, to lay taxes, order them collected, appoint officers to grant licenses, give them fees, and order those fees paid by the persons to whom the licenses were granted? And what right had he and his Courts to compel every retailer, who should sell without such license, to pay a fine of £10 currency for every offence, and that fine recoverable in the very Court that laid the tax, and imposed the fine? What an almighty power these Courts of Police were possessed of! Not only claiming, but exercising, the powers of legislation, making laws, imposing taxes, appointing officers, and collecting the money. By the laws of England, no tax can be laid, but by an act of Parliament, all taxes being gifts and grants of the people to the King, for the use of Government, and such acts must always originate with the House of Commons. New York was originally governed in the same manner. It exactly pursued the method of Parliament, and all taxes were laid by the General Assembly and by no other power whatever. Did the Courts of Police pretend to be the representatives of the people? If they did, they were wrong. The people had no hand in their election or appointment. On the contrary, they derived all their power under the proclamations of Generals and Governors. And all the powers the Generals and Gov-

ernors pretended to give, (for no legal constitutional power within the British Dominions could vest by such proclamations) was a power to *try all causes arising after the 1st May, 1777, upon principles of law and equity.* Notwithstanding which, a most extraordinary power was assumed, not even by the sanction of a proclamation, but by the verbal order of a Governor to the Courts of Police; a power of legislation, and such power carried into execution, by the imposition and collection of a very heavy, odious, and grievous tax, a tax laid upon his Majesty's subjects, contrary to the laws of the land, and the very fundamental principles of the British Constitution. The order was from Governor Robertson, and supposed to be verbal, as it never was published. The Courts of Police obeyed it, laid the tax, collected the money, and into the "city funds" it went. This was also in direct opposition to an act of the British Parliament passed in 1778, which declared his Majesty's subjects in the British American Colonies forever exempt from taxation by Parliament, and ever afterwards to be taxed only by themselves in their several assemblies, and in no other manner whatever. Was not this act then in full force? And was not this excise laid by the Courts of Police, pursuant to the Governor's order, a violation, a breach, a contempt, of that act? And was not the exercise of such a power of taxation by such Courts, not only repugnant to the spirit and letter of that law, but contrary to the common, the customary, and the statute, laws of the realm, as well as those of the Colony? Was it not an infringement upon, and a stab in the very vitals of, the British Constitution? Could the Governor, or the Officers of the Courts of Police, had they been, as they ought to have been, called to an account, have

been justified in so illegal, arbitrary, unconstitutional, and even rascally an act? May I be permitted to ask, whether every person who compelled the payment of this illegal tax, imposed by the Courts of Police, and forced from the subject at the point of the bayonet, would not, had the war ended in favour of Britain, been obliged, in case of prosecutions, to have disgorged the ill-gotten, extorted pelf, with full costs of suit?

An exercise of arbitrary power which occurred upon Long Island, soon after the appointment of a Court of Police there, must now be mentioned. This Court was established in June, 1780. The authority given by the proclamation was "to try and determine all "causes from a certain period upon principles of "equity and justice." Yet on the 18th of August following, George Duncan Ludlow, Esq., the Superintendent, or Judge of this Court, issued an order under his hand and seal, and directed it posted up in all the public places in the township of Oyster Bay in Queens County, ordering "that no person should presume to "cut sedge upon the marshes lying on the south side "of the Island within the township aforesaid, before the "10th day of September, then next ensuing," and the Militia Officers of the district were ordered to enforce the injunction by making the delinquents forfeit the grass cut before the time limited in the order. Here was a power assumed by Mr. Ludlow with a vengeance. The marshes upon the south side of the Island within the township of Oyster Bay were private property. This fact the Superintendent at the very time well knew. A division had been made among the proprietors, and each had, and knew, his share in severalty. No persons were ever suffered to cut hay there without the consent of the owners. This Lud-

low also knew. He had, a few years before, sat upon the Bench as a Judge of the Supreme Court, when an action was tried for a trespass committed upon those very marshes. The proprietors established a full and clear title, a long and uninterrupted possession, and a verdict was found in their favour. Yet, did this same Judge, of his own accord, without the assistance of a jury, by an act of downright despotism, deprive the lawful proprietors of their legal property, forbid them to cut their own hay before a certain day, and under a certain penalty. He went further, he gave permissions to all other persons to cut grass upon the territories of individuals equally with themselves. Was not this an act of tyranny? He might, as well, have ordered all the Indian corn within the township not to be gathered before a certain day, under a certain penalty, and given liberty to all the inhabitants, after that day, to gather the corn for themselves equally with the rightful owners. The latter order would have been as legal as the former, and there would have been as much justice or legality in the one, as in the other.

The marshes in the township of Hempstead are undivided, and held by the inhabitants as tenants in common. It would, therefore, have been inequitable for one person to cut before another. To prevent this, the people at their annual town meetings, held in consequence of their patent, and the laws of the Colony, used to agree and fix upon a certain day to begin, before which no person had a right to cut. This was a regulation of their own; it was religiously observed. Nobody, surely, had a right to interfere in the business of a town relative to its private property. Yet, Mr. Ludlow, at the head of the Long Island Court of Police, assumed a power of divesting the town of this

ancient custom, and without the consent of the town, appointed a day himself, and ordered that no person should cut before that day under a certain penalty mentioned in the order, thereby dispossessing them of a right to manage their own estate. A right ever before enjoyed, a right given them by the King's grant, confirmed by the laws of the Colony, and never contested, or intermeddled with, until Mr. Ludlow, by his own arbitrary power, derived under the Governor's proclamation, by an order under his own hand, wrested the right from the people in whom their letters patent had placed it, and lodged it in his own little despotic, inquisitorial, Court of Police.

That the order pretended to be brought to New York by the Governor in 1780, (to take possession of all rebel estates within the British lines, and to accommodate the refugees with them, or to hire them out for their use), was not complied with, agreeably to his Majesty's real intention, signified in the order, if such an order ever did really exist, a few instances shall be produced, though hundreds might be given.

Philip Kearny, Esq., a gentleman of character and reputation, a loyal refugee from New Jersey, where he left a large real and personal estate (afterwards seized upon, confiscated, and sold, by the rebels) applied in consequence of the order for the use of a rebel farm. The Governor accordingly ordered the possession of a house and small farm, called rebel property, belonging to one Tom, of Flushing, in Queens County, on Long Island, to be delivered to him. But notwithstanding the royal order, or Mr. Kearny being a refugee, a strict loyalist, a great sufferer, with a wife and a large family of small children, and within the express words of the supposed order, yet, the Governor compelled

him to pay into the city funds £60 a year as a rent for the place. Was this complying with the royal order? Was this agreeable to his Majesty's most gracious intent? Could any such construction be put upon the order? And here it may be also asked, what right, power, or authority, had the Governor to appropriate rebel estates, or their produce, in any other manner, or to any other purpose, than what the king's order (if legal) expressly directed.

Henry Huffe, an old loyal subject, near 70 years of age, lived upon the manor of Cortland, in the County of Westchester. His son, in conducting a part of the royal army through the country as a guide, was, in a skirmish with the rebels, killed. His serving as a guide, irritated the rebel committee for the County. They determined (as the son was dead) to wreak their vengeance on the father. They accordingly turned him out of his house, seized his farm, his household goods, his cattle, and his grain, and, with only his clothes upon his back, drove him like a vagabond from his habitation, and transported him like a felon to the City of New York. Here he was informed of the order for the appropriation of rebel estates. He was told of the city funds, and was advised to apply to the Governor for assistance. He applied accordingly, sometimes in person, sometimes by his friends, sometimes verbally, and sometimes by memorial. After an almost daily attendance for a month, he received a letter from Captain Murray, General Robertson's Secretary, (and a son of a Mr. Murray who was the Pretender's Secretary in the rebellion of 1745, defrauded his master out of a large sum of money, turned king's evidence, and hanged his friends), not for the possession of a rebel farm, or house, or any other assistance,

but acquainting him, that as he appeared to be really in want, he should have an asylum in the work-house, (a place where vagabonds and idlers are kept at hard labour and short commons). The old man, with tears in his eyes, exclaimed, "Good God! am I, after all "my sufferings and loyalty, to be offered a refuge in "a work-house, a house of correction, among rogues, "villains, and disorderly persons?" I saw the letter myself. It was dated in July, 1781. He retired to Long Island, the place of his nativity, and was there maintained, at the expense of his former neighbours, and a few relations. This single case shows that the Governor concerned himself little about the royal order, of which he talked so much. He was solely bent upon hiring out as many rebel estates, and getting as much money into his new-created funds, as possible.

A justice of the peace of the parish of Hempstead, in Queens County,<sup>1</sup> I have heard often publicly declare, that during the rebellion they provided for such a number of refugees, that the poor rates amounted to treble what they were prior to the war. Most of these poor, loyal refugees, thus maintained, applied for allowances arising from the rents of rebel estates, or to be put into possession of rebel farms agreeably to what the Governor said he was ordered by his sover-

<sup>1</sup> Thomas Smith, Esq., a gentleman long in the Commission of the Peace, of the utmost veracity, in affluent circumstances, of undoubted character, unblemished reputation, and notorious for loyalty of the most stubborn kind. Living adjoining the Sound, so many attempts were made by the rebels from New England to take him off, that they obliged him to remove from home, and for more than four years before the close of the war, he lodged every night with some friend or acquaintance, making it a rule never to sleep two nights running at one house. By this means he escaped their vigilance. His house was, however, twice broken open, plundered, and robbed, his wife insulted, his daughters abused, and his sons carried prisoners into Connecticut.

eign to do. They never could obtain either the one, or the other. Instances of this kind were as innumerable, as they were shameful, scandalous, and dishonorable to a British General, a British Governor, his Courts of Police, or his director and manager of rebel property.

A vast number of rebel estates were hired out, the rents, with the cash arising from lotteries, and the illegal tax upon the retailers of strong liquors, with the ordinary revenues of the City Corporation, were all paid into the "City funds," the whole annually amounting to at least £30,000. It is natural to inquire, what became of all this money? A sum adequate to the comfortable maintenance of all the poor refugees within the lines. The question, if common report spoke truth, is easily answered. A little was allowed, with the consent of Governor Robertson and Commandant Birch, to be drawn out of the fund by the Church Wardens and Vestry of the city for the maintenance of the parish poor. Robertson and Birch stipulated the sums, and trifling ones they were. The residue was drawn out by orders from the Governor and Commandant, and appropriated, either to their own particular use, or lavished away, and squandered, upon favourites, upon little misses, upon strumpets, panders, and hangers-on; in balls, in dances, in rents, and feasts; in making malls, laying walks, illuminating trees, building music galleries, and in every other kind of dissipation that two old souls could think of, imagine, or contrive.

Had the Courts of Justice been revived, the civil law re-established, the Custom House opened upon its ancient footing under its former regulations, and a General Assembly called, consisting of members cho-

sen for the City and County of New York, the Counties of Richmond, Kings, Queens, Suffolk, and the Borough of Westchester, all within the British lines, upon the arrival of Governor Robertson at New York, in April, 1780, it would have been of the utmost use to the British cause, and answered the most salutary effects. It would have quieted the minds of the people, at that time agitated and disturbed, in consequence of the illegal, arbitrary, and extortionate, proceedings of the military. It would have convinced the rebel powers that his Majesty did not intend to govern his American subjects by military law, by unconstitutional Courts of Police, or by any arbitrary system of government whatever. The doctrine that he did intend so to do, was industriously propagated by the demagogues of rebellion, and the enemies of Britain during the whole war; and from the conduct of the army, and the Courts of Police, was too much credited by the loyal subjects of his Majesty as well within, as without, the lines. Had an Assembly been called, all taxes upon the subject would have been constitutionally laid, collected, and appropriated. The militia would have been properly regulated, troops raised, clothed, and paid, at least for the defence of Long Island, upon which New York, as well as the army and navy during the war, in a great measure depended for their fresh provisions, their forage, and their fuel. The inhabitants would have been relieved from the impositions of the military, and proper and adequate laws would have been made, and constitutionally passed, to answer every necessary purpose. Had the Courts of Justice been opened, the laws of the land revived, and the civil power in the hands of those in whom the Constitution had placed it, the laws would have been

duly executed, creditors would have been enabled to recover their just, honest, and legal debts; trespassers, breakers of the peace, and prisoners of the subject would have been dealt with according to law, and severely punished. Criminals of every kind would have shared the same fate, and that, constitutionally, and agreeably to the laws of the land. Besides, the establishment of the civil power at that critical time within the British lines, would have been the most conciliatory step that government could possibly have taken. It would have had a mighty good effect upon his Majesty's deluded subjects without the lines, then harassed, fatigued, tired, and weary of the war. It would have been pleasing to all his Majesty's subjects within the lines, who had long and ardently wished for such an event, and who had been, in numberless instances, most cruelly treated by the military, and barbarously used, and horribly imposed upon, for the want of it.

Nothing could have been more agreeable to the merchants and traders, than opening and putting the Custom House upon its ancient, original footing. It would have been the most effectual means of preventing an illicit trade, especially that which was then carried on in so open, so public, and so shameful, a manner, with the rebels. The Custom House officers, with the assistance of the courts of law, and the civil magistrates, might easily have crushed the rascally and traitorous intercourse. But besides all other advantages, which would have accrued from the calling of an Assembly, reviving the civil law, opening the courts of justice, and re-establishing the Custom House, upon the arrival of the Governor in 1780, it would annually have saved the nation the sum of

£8,735, 10s. od. sterling. This was, however, looked upon as a trifle in those glorious days of peculation. To convince the public of what I have asserted take the following estimates:

*Officers belonging to the Court of Police in New York, established and formed in consequence of General Howe's Proclamation of the 1st of May, 1777, with the amounts of their respective salaries.*

|  | £. s. d.           |
|--|--------------------|
| Andrew Elliot, Esq., Superintendent, 365 Guineas per annum.....  | 383 05 0           |
| David Matthews, Esq., Deputy Superintendent, per annum.....  | 200 00 0           |
| Peter Du Bois, Esq., Assistant Magistrate, per annum.....  | 200 00 0           |
| Charles Ward Aphorpe, Esq., 2d Assistant Manager. This gentleman never attended, the appointment was designed as a sinecure..... | 200 00 0           |
| 2 Clerks to the Court of Police, at £100 each.....   | <u>200 00 0</u>    |
|  | <u>£1,183 05 0</u> |

*Officers belonging to the Court of Police, established upon Long Island by Governor Robertson's Proclamation, in July, 1780.*

|  |                    |
|--|--------------------|
| George Duncan Ludlow, Esq., Superintendent, 365 Guineas per annum..... | 383 05 0           |
| David Colden, Esq., Assistant Superintendent. ....                     | 200 00 0           |
| Charles McEvers, Esq., Treasurer.....                                  | 200 00 0           |
| 1st Clerk.....   | 100 00 0           |
| 2d Clerk.....  | <u>50 00 0</u>     |
|  | <u>£2,116 10 0</u> |

N. B. The two clerks were sons of the Superintendent.

*Officers belonging to the Court of Police upon Staten Island, formed by a Proclamation of Governor Robertson, in October, 1780.*

|  |                    |
|--|--------------------|
| Christopher Billop, Esq., Superintendent, 365 Guineas per annum..... | 383 05 0           |
| Benjamin Seaman, Junr., Assistant Superintendent....                 | 200 00 0           |
| A Clerk, Billop's son.....   | <u>50 00 0</u>     |
| Carried forward....  | <u>£2,749 15 0</u> |

£. s. d.  
Brought forward.... £2,749 15 0

*Officers belonging to the Court of Police, established in New York by a Proclamation of the Governor in January, 1781, for the trial of causes under £10, and for the Apprehension and Commitment of Felons, &c.*

|   |                    |
|---|--------------------|
| William Walton, Esq., Superintendent, per annum.....  | 200 00 0           |
| William Waddell, Esq., vested with the same powers as the Superintendent.....   | 200 00 0           |
| 2 Clerks, to each as each, Justice held a separate office, £50 each.....  | 200 00 0           |
| Each of these officers had Waiters, Messengers, Door-keepers, Lacquies, Attendants, &c., and every one had a salary, and all the officers and attendants drew for rations of every kind whatever, the annual amount of which could not amount to less than..... | 1,000 00 0         |
|   | <u>£4,349 15 0</u> |

*Superintendent's Office of Exports and Imports, established by a Proclamation of General Howe, in July, 1777.*

|  |  |
|--|--|
| Andrew Elliot, Esq., Superintendent, 365 Guineas.....                            | 383 05 0                               |
| Lambert Moore, Esq., 1st Deputy.....   | 200 00 0                               |
| John Nugent, Esq., 2d Deputy.....  | 200 00 0                               |
| John Moore, Esq., 1st Clerk.....   | 200 00 0                               |
| James Moran, 2d Clerk.....   | 200 00 0                               |
| Michael Kearny, Esq., Searcher, 10 s. per day.....                               | 182 10 0                               |
| William Tirrell, Esq., Warehouse Keeper, 10 s. per day                           | 182 10 0                               |
| William Seaton, Esq., 1st Assistant, at 10 s. per day....                        | 182 10 0                               |
| Messrs. John Coggeshal and Anthony Kendle, Wharf Officers, 10 s. a day each..... | 365 00 0                               |
| Thomas Bayeau & Wm. Riscola, Assistants to Wharf Officers, 10 s. a day each..... | 365 00 0                               |
| Alexander Gardiner, Wharf Officer upon Staten Island, 10 s. per day.....         | 182 10 0                               |
| John Hill, Wharf Officer at Brooklyn, and Long Island, at 10 s. per day.....     | 182 10 0                               |
| John Moore, Esq., as Private Secretary to the Superintendent-General.....        | 200 00 0                               |
|  | <u>Carried forward.... £7,375 10 0</u> |

|  | £. s. d.           |
|--|--------------------|
| Brought forward....  | <u>£7,375 10 0</u> |
| John Smyth, Esq., Treasurer of the City Funds in New York.....   | 200 00 0           |
| Benjamin Seaman, Esq., Treasurer upon Staten Island.   | 200 00 0           |
| Philip John Livingston, Manager or "Director" of Rebel Estates, commonly so called.....  | 200 00 0           |
| Every one of these officers also received forage and rations of all kinds, and every Clerk, Waiter, Messenger, &c., besides their salaries, received rations of wood, candles, provisions, &c., which at a reasonable, moderate, calculation, must have annually amounted to.... | <u>1,300 00 0</u>  |
|  | <u>£9,275 10 0</u> |

Had a General Assembly been convened, the courts of justice opened, and the civil law re-established, as the Governor promised upon his assuming the reins of Government in 1780, all the above mentioned offices would have been needless, of no use nor efficacy, and such an expense to Government would have been saved.

Let us see now if all the courts in the province, from the High Court of Chancery down to those of the justices of the peace inclusive, had been opened, and in the full exercise of their respective powers, what would have been the expense to Government. Not a farthing. None of the officers in the several courts above mentioned, either judicial or ministerial, received any salaries, the Judges of the Supreme Court, the Master of the Rolls, the Attorney-General, and the Clerk of the Circuits excepted, and they received theirs out of the provincial treasury in consequence of grants from the Assembly. It is true, the Chief Justice and the Attorney-General had salaries from the Crown, which were really paid them annually during the rebellion, so that the re-establishment of the

civil law and the revival of the courts of justice, would not have been attended with an additional expense of sixpence to the Crown, but would, on the contrary, have saved to the nation a considerable sum annually.

Suppose the Custom House had been restored to its former situation, the officers re-established in their former places, what would have been the annual expense to Government? The following relation will show:

The Collector's salary was £300, the Comptroller's £40,  
the Searcher's £40, the Tide Waiter's, £40, the two  
Wharf Officers £40 each, £80, and the two Assist-  
ants, £20 each, £40, the whole amounting to.....£540 00 0

It appears from the foregoing statement, that the annual expense of the Courts of Police, and of the Superintendent's office of Exports and Imports, amounted to £9,275, 10s., out of which deducting the annual expense of the officers of the Customs when upon its original foundation, amounting to £540, the balance stands at £8,735, 10s., sterling, which would have been saved *annually* to the nation had the civil law been restored agreeably to General Robertson's solemn promise when he assumed the civil Government of the Province, and for which he declared he had his Majesty's express orders.<sup>1</sup>

<sup>1</sup>This gentleman arrived in New York, in April, 1780, as civil Governor of the province. He said he had orders to revive the civil law, and open the courts of justice. This he never did; for what reasons, are pretty well known. Instead of which he erected three new Courts of Police, courts unknown to the British Constitution. On the 20th of August, 1780, a New York paper contained the following advertisement: "Major-General Pattison's ill state of health obliging him to "relinquish the command of the city, and garrison of New York, his Excellency, "Lieut.-General Robertson, who commands the district, takes upon him the du- "ties hitherto exercised by Major-General Pattison." If New York was a gar- rison and to be governed by military law, what occasion was there for a civil Gov-

If arguments drawn from inconveniences have any weight, and I am told that Lord Coke, in his *Commentaries upon Littleton*, lays it down as a maxim, that, "argumentum ab inconvenienti fortissimum est in lege," such a multitude could have been produced, as ought to have induced the Governor, instantaneously upon his arrival, to have abolished General Howe's Court of Police, and revived the Civil law, and the Courts of Justice, within the British lines. He had a power to do it, nay, if you believe him, he had an order that directed it. However, it was not done, but instead of obeying the order, and doing an act so agreeable to the inhabitants, he, by his proclamations, established three more Courts of Police in addition to the one established by General Howe. One of these Courts had jurisdiction over all Long Island. This Island is 120 miles in length, and, upon an average, 12 in width. It is thickly settled, contains three counties, and each county the following towns and villages.—Suffolk contains—Montauk, Southampton, East Hampton, Bridge Hampton, Sag Harbour, Southold, Old Man, Mories, Southhaven, Coram, Brookhaven, Smithtown, Crab Meadow, Huntington, Islip, Secatogue, and the

ernor? Robertson succeeded Tryon in the civil Government of the province. How different their conduct? When General Howe took possession of New York in 1776, he offered to make Tryon the Commandant, who nobly replied, "that he could not see the propriety of the civil Government of the Colony and the military command of its capital being vested in the same person," and politely refused the proffered honour. He received, he said, "a salary from the Crown as Governor of the province, and thought himself bound in conscience not to accept of being Commandant of the city, and receiving also the fees and emoluments of so lucrative an appointment." What a difference in the sentiments of the two Governors. Robertson held the civil Government with the salary, received amazing fees as Judge of the Prerogative Court, and yet accepted of the Government of the city as a Military Commandant, and exercised martial law within the very limits of the civil jurisdiction. Tryon was an honest, worthy, true-born Englishman. Robertson, an artful, cunning, hypocritical, peculating, money-making Scot.

Kills; Queens includes—Cold Spring, Oyster Bay, East Wood, Bethpage, Jericho, Norwich, Jerusalem, Merrick, Musketocove, Matinicock, Westbury, Herricks, Cow Harbour, Hempstead, Foster's Meadow, Rockaway, Great Neck, Springfield, Sussex, Jamaica, Flushing, Black Stump, Fresh Meadows, and Newtown; Kings contains—Brookland, Bedford, Bushwick, Gowanus, New Utrecht, Flatbush, Gravesend, Flatlands, and New Lotts. Interspersed between these towns and villages are situated an amazing number of well-cultivated farms. It may be easily conceived that Long Island was thronged with inhabitants. It really was so. It was so before the rebellion, and much more so during its continuance, as it afforded an asylum to thousands of refugees who had fled from their homes to avoid the tyranny of Congress. Among such a number of inhabitants a due and equal administration of justice, of law, and equity, was absolutely necessary. Before, and until, the Declaration of Independence, the Island enjoyed all these blessings.

A Supreme Court of Nisi Prius for the trial of civil local actions, with a Court of Oyer and Terminer, and General Jail delivery, for the trial of criminals, were held once a year, and an Inferior Court of Common Pleas, as also a Court of Sessions, twice a year, in each County, and in each village upon the whole Island there lived at least one Justice of the Peace. In each County there was a Sheriff, and a Coroner, and in each town a Constable. By this means justice, law, and equity, were duly administered through every part of the Island with the greatest ease, without the least inconveniency, and at a moderate expense. Criminals of all kinds were easily apprehended, committed, and tried; if capital, in the Court of Oyer and Terminer,

if under grand larceny, in the Sessions, or if in the vacation, by three Justices (quorum unus), by virtue of an act of Assembly giving them that power. All civil causes above £10 might be decided in the Common Pleas; all under that sum, before a Justice, assisted by a jury, if required by either party. The Declaration of Independence put an end to all this system. The landing of the royal army, the battle of Brookland, and the evacuation of Long Island by the rebel army, put an end to independence upon Long Island. The Civil law should have been now revived, and the Courts of Justice opened. This was not done. Instead of it, an arbitrary, unconstitutional, Court of Police was erected in virtue of a proclamation of General Howe, which gave its officers a jurisdiction of *all civil matters within the British lines which had arisen, or should arise, after the 1st May, 1777.* The Judges of this Court were not under oath, gave no security for the faithful discharge of their duty, and decided all causes without a jury. Judgments given by this Court were irreversible. The powers of the old ministerial officers were also abolished, and their authority, by this illegal Court, called "a Court of Police," lodged in the hands of military officers.

The Court of Police for Long Island was held at Jamaica, 12 miles from New York, and over 100 from the Easternmost part of the Island. All civil power being gone, no justice could be had, no debt recovered, no agreement enforced, no performance of a covenant compelled, nor a criminal apprehended and committed, nor a breaker of the peace bound over, without an application to this high and mighty Court of Police at Jamaica. The inconveniences, therefore, arising from

the abolition of the Civil law, shutting up the Courts of Justice, and the establishment of illegal, arbitrary, and unconstitutional, Courts of Police, must be evident to a person of the meanest capacity. For instance, had a murder, or any capital offence, been committed upon any part of the Island, there was no officer to apprehend, no Judge nor Justice to commit such criminal. An express must, therefore, have been sent to the Court of Police. Let us suppose the crime committed in the very next adjacent town or village to Jamaica. Before a messenger could get to the Court of Police, make a complaint and return with a militia officer and the Superintendent's order for apprehending the criminal, it would have been a thousand chances to one but that he had in the mean time made his escape. If this might have been the case so near the Court of Police, what would have been the consequence had the crime been committed at the distance of 20, 30, 40, 50, or 100 miles from this new-fashioned Court? An escape beyond a doubt. And a murderer, a burglar, a robber, or a highwayman, must have gone unpunished for want of a proper officer to apprehend, and a Justice with power to commit. Was not this a manifest, glaring inconvenience? And entirely owing to the abolition of the Civil law, shutting up the Courts of Justice, depriving the legal magistrates of their constitutional power, and the erection of these Courts of Police. Matters of this kind were not considered, friends were to be served, the expense was out of the question, John Bull paid the reckoning.

Perhaps two-thirds of all the debts contracted upon the Island were under £10. Such debts were, prior to the rebellion, recoverable by law before a Justice of the Peace; a jury might be had if required by either

party. To find a Justice no suitor would travel above five miles, the expense, a little loss of time, not more than two hours. But how was the case altered when this power was illegally and unconstitutionally taken from the Justices of the Peace, where the law had placed it, and vested in an arbitrary, despotic Court of Police. Every suitor, unless he lived in the very environs of Jamaica, was obliged to travel from 5 to perhaps 140 miles, or more, to apply for the recovery of a small debt of not more perhaps than 40, 50, or 60 shillings. It could not possibly be more than £10. The application made, and the summons issued, the Plaintiff must return home. He must attend again upon the trial, from which, when over, he must again return home. Was not this a hardship, a cruelty upon, and a great inconvenience to, his Majesty's loyal subjects? A creditor who could, while the civil law was in force, recover his debt by travelling four or five miles, and at a very trifling expense, was obliged, in consequence of the establishment of a Court of Police, and the abolition of the Courts of law, to travel from five to perhaps 120 miles or more, at a heavy expense, to compel the payment of a small, though just, debt, which might have been wanted towards the maintenance of a poor family.

Suppose, for instance, that a suitor lived only 50 miles from Jamaica and wanted to recover £10; he must have travelled there—a good day's journey—lodged, and returned home the next day. This could not have been done in those dear times under 50 shillings; he must have travelled there again upon the return of the process; this would have cost him 50 shillings more, besides the loss of two or three days at least. One-half, therefore, of the whole must have

been expended before a recovery could be had. But if, instead, of 50 miles, the creditor had been obliged to travel 100 or more miles, and if instead of £10 the debt had been only, 5, 6, or 7, pounds, or perhaps not more than 40, 50, or 60 shillings, how hard would have been the case. It would have been better for suitors in such a situation to have relinquished their debts, though earned by the sweat of their brows, by hard toil, fatigue, and labour, which numbers did, while their wives and children were in real want. The expenses attendant upon taking compulsory steps were not to be borne by the poor, the needy, and the indigent. If these were not real inconveniences, if these were not downright hardships, and if these were not horrid impositions upon the subject, I must confess that I do not know what an inconvenience, a hardship, or an imposition is.

Another inconveniency and hardship exercised in the Courts of Police was in actions of scandal, trespass, assault and battery, breach of covenant, and articles of agreement. These actions all lay in damages. By the laws of England such actions must be tried by jurors, legally qualified, summoned, and sworn, and the parties entitled to their challenges. If a verdict is found for the plaintiff, the jury assess the damages. But in the Courts of Police jurors were not allowed. The Judges were not under oath. Yet they did, in consequence of a power derived under the proclamations of Governors and Generals, take cognizance of such causes, examine witnesses, decide upon the merits, and give judgment. If in the plaintiff's favor, they assessed his damages, gave judgment, and issued an execution. It was served by a militia officer instead of a sheriff or a constable, and double poundage was

charged. Such were the powers of the Courts of Police. No juries, the Judges not sworn, from their judgments and decisions no appeal was to be had. Every act of theirs was deemed infallible, unimpeachable, and irreversible. Many of their judgments were manifestly erroneous, illegal, arbitrary, and partial; founded upon wrong principles, principles diametrically opposite to law, to justice, and equity; sometimes against the fullest evidence and the most positive testimony. Yet, in these cases, no rehearings were to be had, no motions for new trials made or granted, no writs of error allowed. There was no superior jurisdiction to apply to. If you complained, you were abused, ill treated, and you were insulted. Speak your mind, and you were threatened with the *prevost*. These were some of the inconveniences, the grievances, and impositions which his Majesty's loyal subjects within the lines daily experienced during the rebellion by the arbitrary proceedings of despotic Courts of Police. New York and Staten Island laboured under the like inconveniences, grievances, and impositions from the same causes, though not in so great a degree as Long Island, owing to its length, its width, its population, its number of inhabitants, and the distance which suitors were obliged to travel for the recovery of just debts, though ever so small.

We now proceed to a different subject.

His Majesty's deluded subjects out of the lines found, from fatal experience, that no confidence in, or dependence upon, the proclamations of Governors or of Generals was to be trusted to. During the rebellion they were published in abundance, pardons were offered, restitution to and the immediate possession of estates promised, with the full enjoyment of all the

privileges and liberties of Englishmen, for the performance of which the public faith was repeatedly pledged.<sup>1</sup> Numbers came in and claimed the benefit of such proclamations. What was the consequence? They were refused the possession of their houses and farms upon trifling, idle, and ridiculous pretences. They met with ill usage, bad treatment, and found themselves most grossly deceived. They saw the public faith solemnly promised by such proclamations openly violated, the national honour disgraced, scandalously disgraced, to serve the avaricious purposes of a parcel of infamous peculators. They found themselves, when they came within the lines, upon the public faith, without redress, treated as rebels, insulted and abused, deprived of the privileges of Englishmen, and not a court of justice, nor a civil magistrate, to apply to.

Was it to be expected that conduct like this could have induced deluded and disaffected subjects to return to their allegiance? Many of his Majesty's deluded, and numbers of his loyal ones, who repaired to New York, in consequence of the proclamations aforesaid, in full expectation of enjoying their estates, found themselves most horridly deceived. They were obliged to live in New York, upon Staten Island, and upon Long Island, supported by their friends and relations, while their houses or farms were hired out as *rebel property*, and the rents lodged in the "City funds." Many of these unhappy wretches, finding themselves

<sup>1</sup> Generals and Governors seem to have thought that America could be conquered by proclamations. The Commissioners adopted the same plan; serious fighting would have done much better. Proclamations at last became so common that the rebels held them in the utmost derision. Nay, Governor Livingston, of New Jersey, made a kite of one published by Lord Carlisle and his brother commissioners, for a son of his to play with.

deceived, and the public faith violated, returned back into the rebel country, and sought that protection from the enemies which was denied them by the servants of their Sovereign. Such were the steps taken by Generals, by Governors, and by the Courts of Police, to reclaim the deluded, to conciliate the disaffected, and to crush an unhappy, and obstinate rebellion. Could it be expected that any persons would return to their allegiance, when they knew that the moment they entered the British lines there was no law for the protection of their lives, their liberty, or their property; that they might be unjustly imprisoned, by the will and caprice of the military, by the tyranny of the Mayor, or the despotism of a Court of Police; that they might be tried by court martial for asserting the rights of Englishmen, and if convicted, flogged at the halbersts by British drummers; that their property might be taken from them with impunity, and not a court to apply to for a restitution of the stolen goods; that a man was in danger of having his wife and daughters insulted, his sons abused, and himself treated as a rebel? I say, what person would return to his allegiance when he was well assured that such would be the consequence of his return? Such was the usage, such was the conduct, and such was the policy made use of by Generals, Governors, the Mayor, the Courts of Police, and the Manager of rebel estates, to reclaim the deluded and the disaffected. It had a contrary effect. It riveted them in their disaffection, confirmed them in their rebellion, and fixed in them an aversion to the British nation, to the government of England, and to all the promises held out in the proclamations of Generals and Governors, in which they found, many of them by fatal

experience, that no confidence, faith, nor reliance was to be put.

It was really surprising that the daily, wanton, and repeated, arbitrary and illegal acts committed upon his Majesty's loyal and peaceable subjects by the military, by Quarter-masters, Barrack-masters, Commissaries, Courts Martial, and Courts of Police, had not driven more (numbers they did) out of the British lines. Nothing but stubborn loyalty to principle, and rank aversion to rebellion, restrained them.

If Great Britain had, instead of governing by military law, by Courts of Police, and Courts Martial, revived the Civil law, opened the Courts of Justice, invested the civil magistrates with their full power, and convened General Assemblies in New York, New Jersey, Pennsylvania, Rhode Island, Virginia, and in South and North Carolina, (as well as in Georgia, where it produced the most salutary effects,<sup>1</sup> and the Colony remained in perfect peace and quietness until its surrender by the new Ministry to the rebel powers in 1783), as the rebels abandoned these provinces,

<sup>1</sup> This fully appears from a letter of Sir James Wright, the Governor of that province, to Lord George Germaine, of the 9th March, 1781, in which he says: "I have assented to a bill entitled an act for granting to his Majesty certain duties upon all goods, wares, and merchandise of the growth of this province, as a contribution to the British empire. These duties y<sup>e</sup> province has cheerfully granted, and beg his Majesty will condescend to accept the same as a small token of gratitude to his Majesty and affection to the mother country. Five per cent. was at first proposed, but the distressed state of the province induced them at present to fix it at only two and a half. Another bill is also passed for securing his Majesty's government and the peace of the province, and for the more effectual protection of the King's loyal subjects against the wicked attempts of rebels and other disaffected persons." Had every conquered province received the same treatment with that of Georgia, the same salutary effects would undoubtedly have ensued. Everything would have been peace and quietness, harmony and content. No new revolts, no new usurpations, would have taken place. Into their measures of resistance the people of America were fairly driven for the want of civil law, and by the indiscriminate plundering of the royal army.

and fled before the British arms ; and prevented, by severely punishing, all kinds of plunder, rapine, and pillage, committed by the army, the rebellion, in all probability, would have terminated in a different manner. The empire would not have been disgraced nor dismembered, nor Great Britain reduced to the necessity of asking pardon of her ungrateful children, acknowledging herself in the wrong, and granting them absolute, unconditional, independence. But, alas ! a conduct the very reverse of this marked every step of the royal army in all its proceedings, and Great Britain, as well as the Independent States of America, feel to this very day, the dire effects of a conduct so very impolitic, so unmilitary, so unjustifiable, and so repugnant to the Constitution, the spirit, the honour, and the sentiments of Englishmen.

## CHAPTER IX.

WE now come to the transactions in America, as well military, as political, for the year 1781.

Early in this year General Clinton sent Arnold with 1,700 men to make a diversion in Virginia, attended by several men-of-war, and armed vessels, proper for the navigation of the rivers in that province. Arnold landed at, took possession of, and strongly fortified, Portsmouth. He made incursions into almost every part of the country and met with little resistance. He destroyed an amazing deal of property, burned some vessels upon the stocks, and captured numbers that had fled for shelter into the rivers; plundered the inhabitants of their private property, and seized upon the public stores, consisting of tobacco, sailcloth, cordage, provisions, and military stores of every kind, to a very large amount, which were, together with the captured vessels, sent to New York, libelled, and condemned. The plunder upon this expedition extended to small matters as well as large. A sloop loaded with sheep, calves, geese, turkeys, ducks, guinea-hens, dunghill fowl, pigs, butter, eggs, hams, and smoked tongues, taken from the poor farmers, was sent by the General as a present to his wife in New York. The

ravages committed by Arnold in Virginia drew the attention not only of the rebels, but of the French at Rhode Island, to that quarter. Washington despatched from his army 2,000 men, under the command of the Marquis de La Fayette, into that Colony, and Monsieur de Ternay, who commanded the French fleet at Rhode Island, embarked the land forces, under the command of Monsieur de Rochambeau, and sailed for the Chesapeake, in order to co-operate with La Fayette and his rebel army. Of this movement, Admiral Arbuthnot, who lay with the English fleet in Gardiner's Island Bay, not far distant from Rhode Island, soon had notice. He sailed two days after De Ternay, and bent his course for the Chesapeake. On the 16th of March the two fleets met. They were almost equally matched. The English had a few more guns. The French had all Monsieur de Rochambeau's army dispersed in their several ships. This gave the French Admiral evidently the advantage. An engagement took place. It was but a partial one. It was in a great measure supported by three ships only, the Robuste, Captain Crosby, the Prudent, Captain Burnet, and the Europe, Captain Child. When the rest of the fleet, "which the Admiral had been manœuvring for about two hours to little purpose, were coming into action," the enemy fled, and having been pretty well disabled by three ships only, made the best of their way to Rhode Island and disembarked the troops. The action was by no means decisive. It, however, prevented the French from entering the Chesapeake, frustrated all the purposes of the expedition, and disconcerted the whole plan projected by Washington, De Ternay, La Fayette, Rochambeau, and Congress, for the Virginia Campaign. Arbuth-

not, having certain intelligence that the French fleet was returned to Rhode Island, proceeded to New York, repaired his crippled ships, supplied the fleet with wood, water, and provisions, and then returned to his old station at Gardiner's Island Bay to watch the further motions of De Ternay.

A few weeks after this, General Phillips, who was next in command to Burgoyne upon the Northern expedition, and included in the Saratoga convention of October, 1777, and who had been then lately exchanged, arrived in the Chesapeake from New York with 2,000 men, landed at Portsmouth, joined Arnold, and took the command. Arnold soon after returned to New York, as rich as a Nabob, with the plunder of Virginia. Phillips was now sent to make his fortune out of what Arnold had left unplundered.

In January, 1781, Washington's army having received neither pay, nor clothes, for more than a year, grew mutinous, insisted upon having their clothes and pay, and threatened, in case of refusal, to disband. The evil was not to be remedied. Great pains were taken to pacify the mutineers. They were coaxed, flattered, promised, cajoled, and at last threatened with military execution. All did not answer the purpose. The Philadelphia line, consisting of 1,500 men, in spite of Washington, and all his officers, their efforts, persuasions, and threats, marched out of their huts, proceeded into New Jersey, and took up their quarters at Princeton, at the distance of nearly sixty miles from Washington's cantonments. The highest persons in rank among them were sergeants. Out of these they chose a Commander-in-Chief, and all other necessary officers, out of the same body, and that of the corporals. Regular guards were kept. The troops im-

plicitly submitted to the orders of the new Commanders. Commissaries were appointed, and provisions collected about the country for the use of the revolters. In a few days after the revolt of the Pennsylvanians, the Jersey line, consisting of 500 men, followed the example, marched out of the rebel camp with loaded arms, colors flying, and drums beating; they took with them also two field-pieces; they discharged their officers, insulted Washington, marched into New Jersey, and took up their quarters in a town about 20 miles distant from Princeton. These secessions reduced the rebel army to about 3,500 men, who were cantoned in the Highlands, in the province of New York, on the West of the Hudson. All the rebel country was in alarm. Well they might be. The winter was one of the mildest ever known in America. All the bays, harbours, rivers, and creeks, were open, not a particle of ice in either, and the frost entirely out of the ground. Clinton was in New York with not less than 20,000 effective men, a disciplined Militia of above 6,000, healthy, strong, able-bodied men, perfectly loyal,<sup>1</sup> 1,500 embodied Militia upon Long Island

<sup>1</sup> In justice to the New York Militia the following extracts of letters, are here inserted: "New York July 1, 1780. General Robertson has great pleasure in announcing to the inhabitants of New York a letter from Lord George Germaine, of the 3d of May, 1780. 'The loyal and spirited behaviour of the inhabitants of New York in so cheerfully and unanimously taking up arms, and embodying for the defence of the town when it was laid open to an attack on all sides, and deprived by the strength of the frost of the natural defences the rivers afforded, which General Pattison has fully stated to me, does them great honour and has given your King great satisfaction. And it is his royal pleasure that you acquaint them that their conduct is highly approved of by his Majesty.'"

" New York, June 27, 1780.

" To the Citizens of New York.

" GENTLEMEN—I take singular satisfaction in presenting you with a letter from "the Commander-in-Chief, that the sense which his Excellency entertains of your

within the Counties of Kings and Queens, at least 2,000 refugees within the lines, formed into regular corps, and commanded by experienced officers, and a Battalion of De Lancey's provincials, and the Militia of Staten Island. Besides these, there were in the harbour of New York, above 40 men-of-war, armed vessels, and galleys. Now was the time for the Commander-in-Chief to have crushed rebellion at once. What did he do at this crisis, so favourable to Britain, and so ruinous, if properly managed, to the American cause? He went with 15,000 veterans, accompanied by 20 men-of-war and armed ships, to the westernmost

"merits may be publicly known. As his Majesty's royal approbation of your loyal  
"and spirited behaviour, signified by Lord George Germaine, has been communi-  
"cated to you by General Robertson, it is unnecessary to recite the contents of a  
"letter to me from his Lordship upon the subject. It may be further presumed  
"that the report I have made of your readiness on all occasions in carrying on  
"the King's service, will be no less acceptable than my former one, giving an ac-  
"count of the alacrity in which you voluntarily embodied and offered your service  
"in your Sovereign's cause.

"I am, etc.,  
"JAMES PATTISON."

"June 20, 1780.

"Sir—The zeal testified by the inhabitants of New York to oppose the enemy  
"evinces the confidence they place in you, as well as a courage and loyalty highly  
"to be respected. I request, sir, that you will make known to them, that I am  
"sensible of their merit, and of the additional claim they have acquired to protec-  
"tion and support from his Majesty's arms,

"I am, etc.,  
"H. CLINTON."

"Major General Pattison, Commandant of the City of New York."

On the 3d of June, 1781, the citizens of New York, that is, the embodied Militia, received the following letter: "The new redoubts near the East river  
"which the Militia have with such lasting credit to themselves been employed in  
"raising, being now in a satisfactory manner completed on their part, General  
"Pattison returns them his sincere thanks for this fresh instance of their readiness  
"to contribute their aid in forwarding the public services.

"By order of the Commandant.  
"STEPHEN PAYN, Adj't. and Aid de Camp."

part of Staten Island, about 20 miles from New York. The rest of the army, the Militia, and refugees, were left upon York Island, at Kingsbridge, Morrisania, and upon the westernmost part of Long Island, within a few miles distant from the city. Twenty men-of-war and armed vessels lay in the North, and East, rivers, opposite the town. New York was of course safe, beyond insult, and in perfect security. In a situation like this, what should the British General have done? He should have marched instantly and rapidly to Princeton, the distance was but little more than 30 miles from Amboy, captured, defeated, and totally broken up the Pennsylvania line, then march to, and done the same with, the Jersey line. The Jersey Militia could have given him no trouble. Washington, with his army thus dismembered, would never have left the Highlands. Suppose he had, and that the Jersey Militia would have joined him. General Clinton might have forced the rebels to disband, or to fight under every disadvantage, upon the lowlands in Jersey, with dispirited Continentals, and a Country Militia, badly disciplined, the whole, when joined, forming perhaps a motley army of not more than 8,000 men, opposite to 15,000 as well-disciplined troops as ever a General led into the field, including two regiments of horse, and a most tremendous train of artillery. He might have conquered Jersey. He might either have demolished Washington's army or compelled it to have crossed the Hudson, and taken refuge in New England. Nothing of this, however, was attempted. What was done? The General was upon Staten Island, opposite Amboy, with 15,000 men, and 20 men-of-war and armed vessels. Instead of instantly marching to Princeton, a little better than 30 miles off,

and beating up the quarters of the revolters, he sent ambassadors to them offering terms, (degrading to the British Nation), to wit, to advance the arrears of their pay in hard money, to clothe the whole, that their arms and accoutrements should be their own property, that such as chose to go to England, should have their passages paid, and provisions supplied them, at the expense of the Crown. Those who inclined to stay in America, should be protected, and provided for in good quarters, until the end of the war; and all the new appointed officers, which, when the revolt commenced, consisted of sergeants, and corporals, should be established in the British army in the same rank to which they had been elected by the revolters. That is to say, from a General down to an Ensign inclusive. Would ever a British General, (Clinton excepted) at the head of 15,000 men, have thought of offering such pusillanimous, degrading, ignominious, terms to 2,000 revolters, deserters, and villains, commanded by sergeants and corporals? What was the consequence of this negotiation? Clinton continued upon Staten Island about three weeks. The revolters continued at Princeton as long. They laughed at, and ridiculed, the proffered terms. They knew the man, the General, and the negotiator. They despised him in each character. They hanged his ambassadors, broke up their quarters, and marched to the Delaware. Here they held a treaty with Deputies from Congress, matters were settled, and the whole rejoined the rebel army. The Jersey line were also satisfied and returned to their duty. This business being finished, the British General with his army, men of-war, galleys, and armed ships, returned to, and triumphantly entered the harbour and City of New York.

I was upon the spot at the time. It then reminded me, and has done ever since, of the following lines written in former days :

“The King of France, with forty thousand men,  
“Went up the hill, and so came down again.”

Let us now inquire, what motives induced the General to continue upon Staten Island, and enter into a treaty with revolters, instead of rapidly marching into Jersey, destroying the Pennsylvanians at Princeton, the Jersey revolters in their quarters, overrunning the province, destroying the remains of Washington's army, or compelling it to cross the North river and take shelter in New England? The reasons were acknowledged by his friends and openly justified. He was suspicious the whole was a stratagem of Washington, and the moment he entered Jersey the revolters would return to the rebel army, cross the Hudson, and forming a junction with the New England militia, attack New York. Could anything be more preposterous, stupid, silly, or absurd? His dependents, however, justified his conduct as founded in sound policy. The absurdity of such reasoning is self-evident. Had an attack been made upon the city, which was highly improbable, if not really impossible, at that period, it would have taken the rebels a long time, had they been ever so numerous, before they could have conquered New York, garrisoned by 5,000 regulars, 6,000 disciplined militia; the lines at Kingsbridge manned by above 2,000 refugees and provincials, a militia of 2,000 men upon Long Island, Ludlow's Battalion of De Lancey's provincials, and 500 refugees upon Lloyd's Neck, well armed, officered, and disciplined; a strong garrison at Paulus Hook,

opposite New York, upon the Jersey shore, and the city surrounded with a number of men-of-war, galleys, and armed ships. To this, let us add, had the General been in any part of the Jerseys, and a serious attack been made by Washington upon New York, he could have returned within three days, and thrown his army into the city. Yet such were the reasons given for not penetrating New Jersey, and breaking up rebellion in detail. It is not, however, to be wondered at. It was only a link in that absurd, childish, frivolous, and ridiculous, chain which marked the whole of his conduct during his command in America. To the pusillanimity in all his actions. To his want of that resolution, spirit, and abilities, which should ever attend the general of a large army. To the stupidity of his head, his enmity to Lord Cornwallis, and his implicit confidence in the advice of a few designing wretches, may be attributed the loss of America, the dismemberment of the British Empire, the disgrace of the nation, and an inglorious peace.

I shall now return to the southward. Before Lord Cornwallis entered North Carolina, another misfortune, equal in its consequences to that of Ferguson already related, happened to his Lordship. About the middle of January, 1781, Col. Tarleton, who had been for some days in pursuit of a rebel corps under the command of a Col. Morgan, unluckily fell into an ambuscade, and was totally defeated with a loss of 400 men in killed, wounded, and prisoners, shortly after his Lordship entered North Carolina. A strong garrison under Lord Rawdon was left at Camden. General Greene (who now commanded the southern rebel army, in the room of Gates, whom the Congress had dismissed the service, on account of his defeat upon

the frontiers some little time before,) determined to give him all the opposition in his power. As Greene was marching to the southward, and his Lordship to the northward, the two armies met near Guilford Court House, in North Carolina, about the middle of March. A desperate battle took place. Greene had about 6,000, his Lordship about 3,000 men. This was the sharpest, and the most hard-fought battle during the rebellion. Victory, after a long struggle, declared in favor of his Lordship. The rebels were defeated, fled, and left the Earl master of the field. The British lost in killed and wounded about 500. The rebels about 1,000, with their artillery and colors. As soon as the battle was over, the militia under Greene dispersed, and returned to their respective homes. The Continentals retreated to the Iron Works, about 14 miles from the Court House. His Lordship continued in the vicinity of Guilford for several days, but not being able, from his loss in the action, the number of wounded, and his want of provisions, to prosecute his march further northward for the present, he altered his course and proceeded to Wilmington, a seaport in North Carolina, which had been some time before taken, strongly fortified, and garrisoned by a detachment of the army and navy from Charleston, about 200 miles from Guilford. He arrived safe, after a tiresome march of several days, without the least interruption whatever, excepting those of bad roads, wide rivers, morasses and swamps.

General Greene, after the battle of Guilford, finding Lord Cornwallis gone to Wilmington, collected together his routed Continentals, and a body of North Carolina militia, and being reinforced with some troops from the northward, began his march to the south-

ward, determined, if possible, to enter South Carolina, and attempt the reduction of the colony. His army consisted of about 6,000 men, including 500 horse, and a tolerable train of artillery; his march was conducted with such secrecy, that he was in the neighbourhood of Camden, where Lord Rawdon commanded, before his Lordship knew a word of the matter. An action soon took place, the rebels were in some measure defeated, but as they were greatly superior to his Lordship, and recruits constantly joining them, no pursuit was made. They also saved their cannon. His Lordship returned to Camden. The inhabitants upon the frontiers, and, in short, in general, in most parts of South Carolina, had been for more than a year, indiscriminately plundered by the British soldiers. The civil law and Courts of Justice were abolished, and no redress to be had against the depredators, but by an application to the military, which was generally without effect. They grew tired of their new friends and wished success to their former ones, and joined Greene in great numbers. He reduced several small posts upon the frontiers. Lord Rawdon now thought it prudent to abandon Camden, burn the stores, demolish the works, set fire to the town, and retreat towards Charleston. Upon this, Greene laid siege to a strong post, called Ninety-six, which was well fortified, had stores and provisions in plenty, a considerable garrison, strong, hearty, and loyal, and commanded by the gallant Col. John Harris Cruger, of De Lancey's first Battalion of New York provincials. The rebels carried on their approaches regularly for some time, but receiving information that a large detachment from Charleston was upon its march for the relief of the fort, Greene took the resolution of attempting the place by

storm. The attack was made with spirit, resolution, and courage. The defence was as obstinate, as spirited, and as vigorous. The assailants were obliged to desist, the siege was instantly raised, and the rebels marched off with their baggage, stores, and artillery. The garrison was too weak to think of a pursuit. When the detachment arrived, the rebels had got at such a distance, that an attempt to overtake them would have been in vain. The rebels in the course of the summer became so numerous in the colony, that although three complete regiments had arrived from Ireland, there was no quelling them. They proceeded to the southward, took one post after another, or post after post was abandoned by the British, upon the approach of the rebel army. Orders were given to evacuate Ninety-six, destroy the stores, and for the garrison, which had been several times reinforced after the late siege and was pretty numerous, to retire. This was accordingly done. The garrison marched for Charleston. Greene followed at no great distance. The British received a reinforcement upon the road, at a place called the Etways, or Eutaw, not a great way from Charleston. An action took place, the battle was general, was well and obstinately fought on both sides. It lasted several hours. The killed, wounded, and prisoners, were nearly equal. No cannon were lost by either party, both claimed the victory, but neither kept the field. Greene retreated, and encamped in a strong position a few miles from the place of action. The British retired to, and secured themselves under, the walls of Charleston. Greene's army daily increased by a junction of the militia from almost every quarter in the colony. He soon became strong enough to coop up the British army within the walls of Charles-

ton, and to straiten them in such a manner with respect to territory, as to render the introduction of fresh provisions into the town extremely difficult and hazardous. And here ended the campaign in this part of the country for the year 1781, a campaign honourable to rebellion, and disgraceful to Britain. In one summer we lost all South Carolina and North Carolina, the capitals, Charleston and Wilmington, excepted. The garrison at Wilmington was shortly after withdrawn, and returned to Charleston, which left the rebels in full and complete possession of all North Carolina.

While the preceding operations were carrying on in the Carolinas, the British forces in Virginia were driving everything before them. They defeated everything that opposed them. The whole province was open to their ravages. They penetrated more than 150 miles into the country. At Petersburgh they destroyed 4,000 hogsheads of tobacco. The destruction of the shipping in the rivers, of ships upon the stocks, of ship-yards, docks, public buildings, barracks, warehouses, timber, flour, stores, and every species of provisions, was amazing. At Manchester they destroyed 3,000 hogsheads of tobacco. The army in returning from Warwick burnt a large range of rope walks, a magazine of flour, a number of warehouses full of tobacco, and tan-houses filled with hides and bark, together with several fine grist and saw mills. In the beginning of May General Phillips was taken ill, and on the 13th died, universally regretted by the army. Upon this, General Robertson, the civil Governor of New York, an old, sickly, distempered man of about 80 years of age, applied to the Commander-in-Chief for the command in Virginia and obtained it. That

Robertson should wish for such a command is no way surprising. It was extremely lucrative, and no man loved pelf, or would go greater lengths to procure it, than himself. The good of the service was but a secondary consideration with him, riches was the primary one; they had ever been the darling of his soul, and to obtain them he would run all risks and go all lengths. But that General Clinton should appoint to a command where the most active, vigorous, and solid operations were to take place, and be pursued with the utmost activity, such an old superannuated wretch, is one of those unaccountable things which, among a thousand others, happened during the American war. Robertson received his commission, embarked his suite, sailed as far as Sandy Hook, where receiving an account of the arrival of Lord Cornwallis in Virginia, he returned to New York, reassumed the reins of government, with his other usual avocations of fribbling away his time in gallant shows with all the little girls in town.

It has been already mentioned that Lord Cornwallis, after the battle of Guilford, went to Wilmington, a sea-port upon the coast of North Carolina, about 200 miles from the field of action. Had his Lordship, instead of going to Wilmington, returned back to Camden, the addition of his army to the troops upon that frontier would undoubtedly have preserved the whole of South Carolina, with a part of that of North Carolina, and kept all things in peace and quietness in that quarter. He would have been an overmatch for Greene, especially as three fresh, complete regiments arrived from Cork early in the summer at Charleston, and the militia of the Carolinas would have been fearful of forming a junction with the rebel army. His Lordship, no doubt, was following the orders of the Commander-in-Chief,

from which he had no right to deviate upon any contingency whatever. But supposing his Lordship's orders positive for proceeding to, and taking the command of the army in Virginia, would it not have been more eligible, when at Wilmington, to have embarked and gone by water to the place of his destination? Had this method been pursued, his army would have arrived fresh, his horses in good order, his wagons unhurt, and his stores, baggage, provisions, and artillery transported with more ease and facility this way than by land. But I take it for granted that his Lordship's orders were peremptory, and he strictly obeyed them as they were planned by the wise and sagacious General Clinton.

The latter end of April Lord Cornwallis left Wilmington, and in about a month, without the least obstruction from the enemy, reached Virginia. The distance was more than 200 miles, the greatest part through an absolute wilderness. When he arrived in Virginia he took the chief command. A reinforcement was also sent from New York to his Lordship, consisting of nearly 2,000 men. They arrived in health and good order, were safely landed, and joined the royal army. Suppose all the troops sent to Virginia at different times had been sent at once, would not much more have been done? And that with less fatigue, less loss of men, and more to the advantage of the general cause. Instead of which, General Arnold was sent in January, 1781, with 1,700 men. The duty was hard, they had forts to build, forage to procure, battles to fight, and an extensive country to plunder and pillage. The province was rather a sickly one. The consequence of which was, that in about two months numbers were dead, and many more unable to perform

their duty by reason of sickness, occasioned by the climate, great fatigue, and incessant toil. The first division being thus reduced, General Phillips, in the month of March, was sent with 2,000 more to join those already there, the greatest part of which, for the reason before mentioned, were now incapable of vigorous and active enterprize. By this time the 2,000 men carried by General Phillips were reduced almost to the same situation with those that went under Arnold. The Commander-in-Chief at New York, about the middle of May, sent another body of men, consisting of about 2,000. These several detachments might have been all sent at once. They could as well have been spared in January as in March, and May, following. They were lying idle within the British lines at New York; they had nothing to do. Had the whole been sent in a body, under experienced, active Generals, great things might have been performed. Virginia must have been totally subdued, Maryland conquered, and the city of Philadelphia taken. There was no enemy in that quarter to have opposed such an army. Everything must have fled before it. As I was upon the spot when these several detachments sailed from New York at the times before mentioned, it put me in mind of the chop houses in London, where they serve up their beefsteaks to their customers "hot and hot."

Lord Cornwallis, upon his arrival in Virginia, his junction with the troops there, and the last reinforcement from New York, found himself at the head of about 8,000 effective men. He found no enemy to oppose. Detachments were sent out and scoured the interior parts of the country; as they penetrated into recesses which had been free from plunder, they did

the Americans much mischief. Several thousand stand of arms, a quantity of gunpowder, of salt, and other stores were destroyed. The latter end of June his Lordship marched to and took possession of Williamsburgh, the capital of the colony. Upon this march 2,000 hogsheads of tobacco, with some brass, and a number of iron, cannon, with a large quantity of military stores of every kind, were either destroyed or brought off. Near Williamsburgh the rear of the British was attacked by a superior number of the enemy. Colonel Simcoe commanded the English. The action, though brisk, was of short continuance, the rebels were defeated and put to the rout with a very considerable loss in killed, wounded, and prisoners. The Marquis de La Fayette, who had been detached by Washington into Virginia with about 2,000 Continentals, was about this time joined by the Pennsylvania line under General Wayne, by the Baron De Steuben with 800 Continentals, and as many militia as the rebel powers in Virginia were able to assemble and arm. This made the Americans so numerous, that his Lordship was obliged in his after proceedings to act with caution and circumspection. He left Williamsburgh the beginning of July, under orders from Sir Henry Clinton, to fix upon and fortify some proper place upon the Chesapeake to serve as a harbour for men-of-war, and a defence and protection for the army in case of an emergency.

Upon this march his Lordship was attacked by the whole rebel army. The engagement was sharp, the rebels were totally defeated, lost their cannon and a number of men, but night prevented a pursuit. His Lordship met with no further interruption upon his march, arrived at the Chesapeake, fixed upon Yorktown and

Gloucester point as proper places to fortify ; he applied to the business with the utmost industry, in order to render the works as strong as possible, as well on the land side as that of the water.

On the 25th of August, Sir Samuel Hood arrived at the mouth of the Chesapeake from the West Indies, with 14 Sail of the Line, some frigates, and a fireship ; but, not finding Admiral Graves there with the fleet from New York, he proceeded to Sandy Hook. There the two fleets formed a junction, and Graves took the command. The fleet sailed from the Hook on the 31st of August. On the 5th of September they discovered the French fleet, under the Compte de Grasse, at anchor in Lynnhaven Bay (having arrived a few days before from the West Indies). Upon the appearance of the English, the French slipped their anchors and stood out to sea. The British fleet consisted of 19 Sail of the Line, the French of 24. An action took place, but it was a partial and undecisive one. The French kept the seas. The British returned to New York, after dismantling and burning the Invincible, which was so much damaged in the action as to be in danger of foundering. De Grasse re-entered the Chesapeake. He was, in a few days after, joined by the fleet from Rhode Island, under the command of Monsieur de Barras. The British fleet, while at New York, was joined by the Prudent from the West Indies, and by Admiral Digby with three line of battle ships from England. The junction of de Barras, however, with de Grasse, gave the French an evident superiority, the British, consisting of 22 sail of the line, the French, of 30. The troops on board de Grasse were landed. De La Fayette, with the troops in Virginia, joined them, as

in a short time afterwards did Monsieur de Rochambeau, with the French army from Rhode Island, and General Washington with the rebel army from the northward. The allied army, when the junction was formed, consisted of 8,000 French, 8,000 Continentals, and 5,000 militia, attended with a most formidable train of artillery, under the direction of experienced French engineers. The British army consisted of about 7,000 men, enclosed in works formed of dirt and cast up in a hurry. Add to which, they had no heavy cannon. The works were soon invested, and the allies opened their trenches on the 6th and 7th of October. Considering all things, the weakness of his Lordship in men compared to that of the enemy, and his want of heavy cannon, the garrison made a noble, a gallant, and a vigorous defence. But at length, despairing of relief, a cessation of arms was proposed on the 17th, and on the 19th of October the garrison surrendered upon the same terms that Sir Henry Clinton had granted to Charleston upon its surrender. The garrison upon its surrender was reduced to about 4,000 men capable of doing duty. Some frigates and a number of transports were also surrendered. Twenty transports and a 40-gun ship were burned during the siege, and 1,500 seamen were made prisoners.

Lord Cornwallis could obtain no terms for the poor loyalists who had joined him, and served during the siege, performing the same duty, going through the same fatigue, and exposing themselves equally with the rest of the garrison. They were declared to be traitors, and, as such, should be tried by the civil law. This, Washington insisted upon. The French would not interfere, and Cornwallis was obliged to submit to

the ignominious term. His Lordship, however, obtained permission to send the Bonetta sloop-of-war to New York, with his dispatches, and not to be searched. On board this vessel all the loyalists were stowed, and happily they arrived in safety, escaped the gallows, the vengeance of Congress, and the insults of a rebel soldiery.

On the 24th of October, the British fleet, from New York, arrived off the Chesapeake with 7,000 troops on board, under Sir Henry's own command. Here, getting intelligence of the fate of Lord Cornwallis, they returned to New York. A garrison was left in Yorktown and Gloucester. The French troops from the West Indies embarked on board de Grasse, those from Rhode Island on board of de Barras. The two fleets continued in company to a certain latitude, when they separated, the one for the West Indies, the other for Rhode Island. Washington, with the rebel army, returned to the Highlands, upon the west of the Hudson, and securely huddled themselves for the winter. The capture of Lord Cornwallis, with the reduction of Yorktown and Gloucester, put an end to the American Continental war, to all intents and purposes, though a large army still remained in America.

During the latter part of the siege his Lordship proposed to evacuate the garrison in the night, cross the bay, march rapidly to Philadelphia, burn the city, destroy the shipping, and proceed through the Jerseys to New York. This might perhaps have been effected. Danger must have attended it. A violent storm prevented the attempt. Had it been made and proved successful, it would have answered a noble purpose. The enemy would have been greatly distressed, nor could Washington ever have regained the

Highlands, as his march through Jersey might, with the utmost ease, have been interrupted by the army from New York, and the rebel chief with 5,000 or 6,000 men, could scarcely have forced a march when opposed by at least 15,000 veterans.

The Abbé de Robine, Chaplain to one of the French regiments at Rhode Island, speaking of the operations in Virginia, says, "That Cornwallis, at the head of "8,000 brave troops, and always superior to his dispersed enemies, did not think proper to attack the "Marquis de La Fayette, who had never more than "2,000 men, is strange. Not to hinder the landing of "3,000 men under Monsieur de St. Simon, from the "fleet, and to prevent a junction between him and the "Marquis, is equally strange. Had he marched down "on their first landing, he would have found a body "of men totally ignorant of the country they were in, "their arms and ammunition still on board, and not a "single entrenchment thrown up. Superior to them "still, after their junction, and threatened with the approach of the armies of Washington and Rochambeau, "his business should have been, by forced marches, to "attack, disperse, and cut them up in detail, before "any junction was formed. It could have been easily "done." He then goes on: "The distance between "York and Williamsburgh is 12 miles, and covered "with thick woods. It would have been an easy matter for Cornwallis to have made a line of abatis "through this forest, and have stopped up the road "from post to post. Three thousand slaves which he "had taken from the planters would have rendered "this mode of defence still more practicable. All our "military connoisseurs have given it as their opinion, "that a few detachments and some field-pieces would

"have retarded the combined army at least a month  
"in their approaches to the works at York, and proba-  
"bly would have destroyed a great number of men.  
"The lands adjoining the town were covered with In-  
"dian corn, and by taking it away, or burning of it, he  
"would have obliged the assailants to get food for  
"their horses at a greater distance, and by that means  
"delayed the transportation of the artillery which was  
"landed several miles from the camp." He then  
again says: "Had Cornwallis known how to have  
profited by circumstances, the relief promised by  
Clinton might have saved him, or at least made a  
great diversion in his favour. The English squadron,  
consisting of 28 Sail of the Line, with 4,000 land  
forces on board,<sup>1</sup> appeared before the Capes the 26th  
October, seven days after the surrender. The  
Compte de Grasse was at anchor with 36 ships of  
the line within the Horse Shoe, a sand-bank over  
which vessels of war cannot pass except through a  
narrow channel. The wind blowing at that time  
right in, completely prevented our squadron from  
getting under way, and consequently could not have  
hindered Clinton from landing his troops." Again  
says the Abbé: "If, after the instructions of Clinton,  
and his promises of speedy relief, Cornwallis thought  
it, nevertheless, improper to hazard an attack, how-  
ever advantageous it might promise to be, he ought,  
however, to have done all in his power to prolong  
and retard the siege. For whatever might have  
been the relief promised by Clinton, contrary winds  
might have delayed its arrival, and a few days gained  
would have been of the utmost importance to him.

<sup>1</sup> The Abbé is here certainly mistaken. The English fleet consisted but of 22  
Sail of the Line, and instead of 4,000, they had 10,000 troops on board.

"He also knew that the Compte de Grasse had declared that he could remain but a short time in the Bay,<sup>1</sup> so that retarding his departure would have been deranging his plans, and consequently hindering him from serving his country elsewhere. The season being also pretty well advanced, the autumnal rains must have made the siege very fatiguing to our troops, and perhaps occasioned contagious tempers among them in a country where the air and water are less wholesome than more northward."

The following letter from General Washington to the Compte de Grasse, dated at Williamsburgh, the Capitol of Virginia, the 26th of September, 1781, will fully show the situation of rebellion at that time. It is taken verbatim from the Abbé Robine's pamphlet.

"I am unable to describe the painful anxiety under which I have laboured since the reception of your letter of the 23d. The moving of the naval force, which you say may possibly happen, obliges me to point out the consequence that may follow, and warmly to urge a perseverance in the plan agreed upon between us. Permit me to repeat that the attempt upon York under the protection of your shipping, is as certain of success, as a superior force, and superiority of measures, can render any military operation. The duration of the siege may be exactly ascertained. The capture of the British army is so important in itself, and in its consequences, that it must greatly tend to bring an end to the war, and put our allied arms in certain possession of the most inestimable advantages. If you quit the Bay, the enemy have it in their power to relieve York. Of

<sup>1</sup> The Chesapeake.

"this they will instantly avail themselves. The con-  
"sequence will be, the disgrace of abandoning a de-  
"sign on which are founded the fairest hopes of the  
"allied forces, after a prodigious expense, fatigue, and  
"exertions, and most probably the disbanding of the  
"army. The present seat of war precludes the use of  
"wagons, from the number of large rivers that inter-  
"sect the country. A total want of provisions must  
"ensue, unless this inconveniency is remedied by water  
"carriage. This province (Virginia) has been so ex-  
"hausted by the ravages of the enemy, and the sup-  
"port given to our forces, that subsistence must be  
"drawn from a distance, and that can only be done by  
"a fleet superior in the Chesapeake. Consider that  
"if by moving your fleet from the situation agreed on,  
"we lose the present opportunity, we shall never here-  
"after have such another in our power. The British  
"will labour to fortify a place so useful as Yorktown  
"to their shipping, and then an honourable peace will  
"be further distant than ever. Your leaving the Bay  
"ruins the cause to all intents and purposes. Consider  
"the good of the common cause. I am told by the  
"most expert sailors, that such a situation may be  
"taken in the Bay, as to leave nothing to be apprehended  
"from an English fleet, that this position will facilitate  
"the operations of the siege, secure the transportation  
"of our provisions by water, and accelerate our ap-  
"proaches by landing our heavy artillery and warlike  
"necessaries in York river almost close to our trench-  
"es. The force under Admiral Digby, as the news  
"comes from the British, is perhaps absolutely false; if  
"it be true, what hopes of success can the enemy have  
"against your fleet? If you can't carry the scheme (so  
"happily agreed upon between us) into execution,

"pray cruise off the Capes. Keep them always in view, and prevent all English vessels from getting in. I press your Excellency to persevere in the scheme so happily concocted between us, but if insurmountable difficulties are in the way, I beg of you not to relinquish the last-mentioned alternative of preventing all English vessels entering the Chesapeake. The British Admiral, however he may manoeuvre, will never bring on a general action (if to be avoided) with a fleet superior to his own. Experience has taught them not even to hazard themselves with equal numbers, and has drawn from them, though unwillingly, the most respectful opinion of their enemy. The absence of your fleet from the Bay may frustrate our design upon York. In the present situation of matters Lord Cornwallis may evacuate the place with the loss of his artillery, his baggage, and a few men ; which will be highly justifiable in order to save the main body of his army." Thus you have the sentiments of the rebel Chief upon the situation of American affairs at that time.

## CHAPTER X.

HAVING done with Virginia, I shall now return to New York. About the middle of July, 1781, General Washington crossed the Hudson with about 3,500 men, and encamped at the White Plains, about 14 miles from the British lines at Kingsbridge, in order to facilitate a junction with the French army from Rhode Island. Hear what the Abbé Robine says upon this occasion. His letter is dated at Phillipseburgh, four miles from Kingsbridge, and 18 from New York, the 4th of August, 1781. "The French army from the first of its march from Rhode Island, in order to form a junction with General Washington in the neighbourhood of New York, was parcelled out into distinct regiments. But upon our approach to New York, it reunited into a Brigade. Being now necessitated to march in a single column, and having our baggage wagons drawn by oxen, our progress was slow, and confined, the whole body occupying an extent of several miles. We had also to fear, lest, in these woody and mountainous regions, parties of the enemy might come and fall upon our baggage and artillery, burn them, and hamstring our horses and oxen, before we could have it in our power to

"relieve them. These losses in our situation would "have been irreparable. The English, however, "although greatly interested in preventing our junction with the Americans, never made the least movement to prevent it." At this time General Clinton had 15,000 regular troops within the British lines, 6,000 well-disciplined militia, a battalion of Provincials, and 2,000 refugees, besides the militia of Kings and Queens, upon Long Island, amounting to at least 1,500 men embodied and officered, with 20 Men-of-War, and armed ships, in the harbour, yet, this junction was permitted to take place about 14 miles from the British lines at Kingsbridge, in an open country, without the least attempt to prevent it. It was averred at the time, and the truth is not to be doubted, that General Clinton received intelligence, three different times, of the intended junction of Washington and Rochambeau.—that the former was to cross the Hudson, the latter to march by land all the way from Rhode Island. That the junction might be easily prevented, and perhaps both armies destroyed, was evidently demonstrated. Encouragement was each time given, but nothing was done; no steps were taken. The informant, despairing of the Commander-in-Chief making the attempt, went to, and laid all the information before, General Arnold, who instantly repaired to Clinton, and offered, if the General would supply him with a proper force, not only to prevent the junction, but to give a good account of both armies. Arnold was perfectly acquainted with every part of the country through which the two armies were to march. The offer was never accepted, and the junction shortly afterwards took place at the White Plains, where they lay three weeks. The two armies

consisted of about 6,000 men. The British force in New York has been already mentioned. The allies frequently sent parties to harass and alarm the English upon the lines. Nay, the two Generals went with a part of their army as far as Mr. Van Cortlandt's, within two miles of Kingsbridge, reconnoitered the Spuyten Duyvil, the river which divides the island of New York from the main, dined at Mr. Van Cortlandt's, and returned to their camp in the evening.

All this time General Clinton was busying himself in building forts and batteries in the environs of New York, making redoubts, forming intrenchments, digging lines, pulling down country-seats of gentlemen, digging up their gardens, cutting down their orchards, and surrounding the city with water, by cutting a wide canal from one river to the other, as if he expected a serious attack. I have already mentioned that the allies continued at the White Plains about three weeks. They broke up their encampment, marched to the foot of the Highlands, about 30 miles, and passed the Hudson, without the least interruption whatever; marched through the Jerseys, and Pennsylvania, and entered Virginia, the consequence of which has been already fully related.

The Abbé de Robine, in his treatise, "supposes that "some expedition was to take place in consequence "of the junction of the French and Americans;" but then, says he, "New York with such an army as "possess it, and such a navy as guards its harbours, "rivers, and creeks, is perfectly impenetrable;" he, therefore, supposed that the allied army was intended for the southward. But in such a situation were the affairs of America at this time, that in his letter, dated Phillipseburgh, August 4th, 1781, he expresses

himself thus: "If this important expedition should fail, all will be ruined. The Americans are exhausted, and discouraged at the revolt of Arnold, panting after repose, and viewing us (the French troops) in the light of a feeble ally, would lose courage, turn their views towards peace, and, perhaps, purchase it at any price whatever." This was the opinion of the Abbè when in the neighbourhood of the British lines. In a letter dated Princeton, September 1, 1781, the Abbè expresses himself in these words: "With respect to the march of the allied army from the White Plains, had the English sent some armed vessels up the Hudson, they might have retarded us considerably, and done us infinite mischief. The retrograde march made by General Washington was doubtless meant to divert them from this attempt. The allied army has now crossed a great part of the State of New Jersey, drawing a large quantity of batteaux with them upon carriages, and always *menacing* Staten Island." The apprehension of an attack upon Staten Island has ever been given by the General and his friends as the reason for not leaving New York, after the allies had crossed the Hudson and entered the Jerseys. What had the General to fear for Staten Island? He had as many men-of-war, and armed vessels, as would have surrounded the island at the distance of a few rods from each other. The amazing force within the British lines, and the small force of which the allied army at this period consisted, has been already mentioned. The Abbè says, "The army proceeded through Jersey in two columns, the Americans forming that next to the sea, although their number, now joined together and drawn from all parts of the Jerseys, does not exceed more than 5,000 or 6,000 men." The Abbè then

proceeds, "The inactivity of the English, at this critical moment, is really incomprehensible. They might, without risking a great deal, harass our army and do us irreparable damage, and they have all the reason in the world to make such an attempt. For though General Washington has had the dexterity to keep them in uncertainty hitherto, they cannot be ignorant that we are in hourly expectation of the arrival of the Compte de Grasse upon these coasts; and they know that de Barras has embarked all his heavy cannon at Rhode Island, and made preparations for sailing. It is their interest to prevent the junction of our forces, and what more favourable opportunity could there be, than when the army was marching through a country covered with woods and mountains, and intersected with rivers; and where, for the want of supplies, the troops were obliged to march in a less compact state than they would otherwise do?" All these advantages, so particularly enumerated by the Abbé, were lost to Britain, owing to the stupidity, the ignorance, the irresolution, and the indecision, of the Commander-in-Chief, Sir Henry Clinton. But André was no more, and *William Smith, Esq.*, whose whole estate lay within the rebel lines, and all whose relations and particular friends were actually engaged in rebellion, was his chief adviser. What was to be expected from such a General, governed by the advice of such a man?

While the allies were marching through Jersey, Washington, Rochambeau, and thirteen other general officers, dined at an inn in Newark, about eight miles from New York, guarded by about 30 horsemen, while the army marched on. A loyalist went post-haste to New York, acquainted Clinton with the circum-

stance, and though a party of our light horse might with ease have been there in time to capture them all, yet no notice was taken of the information. But Smith was the adviser, and Clinton insisted that Staten Island was the object of the enemy. His amazing force considered, what in the name of common sense made him apprehensive about Staten Island?

It has been already mentioned, that General Arnold proposed to the Commander-in-Chief to prevent the junction of Washington and Rochambeau at the White Plains, and to cut up each army in detail, if a sufficient force could be allowed him; that encouragement was given, that the attempt should be made, and Arnold the commander. It was, however, never done. For what reasons Clinton and his adviser, Smith, best know. The junction took place within 14 miles from the British lines. The allies consisted of about 6,000 men, They harassed and alarmed our posts in the neighbourhood of Kingsbridge, threatened to attack New York, and frightened Clinton, though he had nearly 30,000 men within the lines, and at least 40 men-of-war and armed ships in the harbour. The allies, after lying three weeks at the White Plains, decamped, peaceably passed the North river, and proceeded to the southward. Upon this occasion, Arnold, who was a man of spirit, courage, decision, and resolution, spoke with great freedom of General Clinton's conduct. Something was to be done. Arnold was to be pacified. To effect this, he was despatched in the beginning of September upon an idle expedition to New London, the destruction and plunder of which, (the utmost to be expected), could be of very little consequence in the general cause, but could the junction between the French and Americans have been prevented, and the two armies, or even

one of them, defeated, rebellion would have been at an end, and Lord Cornwallis and his army safe. Arnold's expedition was successful, but what end did it answer as to the grand dispute? None. Two forts were stormed, taken, and dismantled, a number of men, with some valuable and experienced officers, were killed, and others wounded. The town was plundered and burnt, and the inhabitants ruined, more than one-half of whom were perfectly loyal, and zealously attached to Great Britain. The fleet returned to New York. Arnold, enriched with the plunder of the town, was perfectly satisfied. Clinton and he became as good friends as ever. This plundering expedition was a project of Smith's, if the letters from New York upon the occasion are to be depended upon. "It was," says one of them, "planned, and the execution of it "warmly solicited, by Mr. Smith, the Chief Justice of "New York, who has gained great credit by its suc- "cess, and is a convincing proof of his loyalty and at- "tachment to his sovereign, though an American." This letter most probably was written, or dictated, by Smith himself, to serve his own particular purposes.

The following anecdote must now be mentioned. A gentleman who had been a prisoner for a considerable time among the rebels, obtained leave in October, 1781, to go to New York upon a visit. He was charged with despatches from the Loyalists in the upper parts of New York, Connecticut, Massachusetts, and New Hampshire, to Government, containing information of the most interesting kind, and proposing that a committee of Loyalists might be appointed in New York to carry on a correspondence with a committee of the Loyalists in those parts. It was, however, a stipulation of theirs, as good management and profound

secrecy were necessary, *that not a branch of that part of the Smith family, of which the Chief Justice was the head, should be acquainted with the business.* For this precaution, they had solid, substantial reasons. The politics of the Smiths were well known, their duplicity, and their hypocrisy, as well. A committee was promised, and accordingly appointed. But to the astonishment of the gentleman who brought the despatches, and in direct opposition to the request of the Loyalists, Joshua Hett Smith, Esq., full brother to the Chief Justice, a person of very suspicious principles as to loyalty, and particularly pointed out by the Loyalists as not to be trusted with the correspondence, was by General Clinton appointed chairman, and put at the head of the Board. This put an end to the plan, a plan most judiciously laid, and which would, had it been properly conducted, have answered the most salutary purposes. But the Commander-in-Chief insisting upon Joshua Hett Smith serving at the head of the Committee, and the orders from the Loyalists being positive not to trust any of that family, the scheme of course was laid aside. A conduct like this might be called obstinacy. But where was the wonder? The General was never remarkable for understanding, and William Smith, Esq., who had hypocrisy, art, and dissimulation, at his fingers' ends, was his *confidant, his adviser, and even his director.*

Joshua Hett Smith has been already mentioned as the supposed betrayer of the unfortunate Major André. I have heard the Adjutant-General, and his Deputy, aver in public company, that a letter of Mr. Smith's to Governor George Clinton, containing every information relative to the state of the garrison, the troops, and fleet, at New York, was intercepted, the latter end

of the year 1781, and brought to their office; that it was in Smith's proper handwriting; that it was delivered to General Clinton; but that so far from any notice being taken of it the author was still harboured, caressed, and entertained. This explains a circumstance told me by a gentleman who was a prisoner in Connecticut in the winter of 1779. A Stephen Moylan, Esq., who commanded a regiment of horse in the rebel service, and was quartered in the same town, in an evening's conversation told the gentleman, "that not "a return of the number and state of the British "army at New York, had been made to General Clin- "ton for the last two years, but that General Wash- "ington received a copy of it in 24, or at most in 48, "hours after its delivery to the Commander-in-Chief."

In the winter of 1781, Sir Henry Clinton received an express from the Governor of Quebec, with proposals made by the inhabitants of Vermont for returning to their allegiance and putting themselves under the protection of the Crown. The Commander-in-Chief, suspicious that he might not have full power to act in this matter, though he was one of the Commissioners for restoring peace to the Colonies, laid all the papers before Mr. Chief Justice Smith for his opinion and advice upon this momentous business,—business, if carried into execution, of such amazing consequence to Great Britain. Smith's opinion was, that Clinton had no authority, in consequence of his commission or instructions, to act in a matter of this kind. That all the documents, letters, and papers received, should be sent to England, laid before the King and council, and an act of Parliament passed for the purpose, without which the General had it not in his power to interfere, without which, in short, nothing effect-

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ual could be done. This happened in December, 1781. In February, 1782, as appears by Sam. Loudon's rebel paper, printed at Poughkeepsie, George Clinton, then titular Governor of New York, called the Assembly together, and laid before them a number of affidavits, proving the treaty between the Governor of Quebec and the Vermonters, the proposals of the latter, the Governor's reference to Clinton, Clinton's application to Smith for his advice, and even Smith's opinion after a perusal of the papers. What are we to gather from all this? Can any man in his senses believe that Sir Henry Clinton would have made a matter of such amazing consequence to the nation, and which might so materially injure the inhabitants of Vermont, public? It is natural to suppose it was a secret, and confidentially communicated by Clinton to Smith for his advice and opinion. And yet, surprising as it is, the rebel Governor of New York, formerly the bosom, the fast, the confidential, friend, nay, the pupil of Mr. Chief Justice Smith, who had been his patron, his protector, and his adviser, was soon made acquainted with every circumstance relating to this transaction. How came he by the secret? The General hardly gave him the intelligence. The question then is, *who did?* It certainly was known to the rebel Governor, he laid Smith's very opinion before his Assembly. How could this matter transpire? It must have been done by somebody. But a member of his Majesty's council, a counsellor to the Commissioners for restoring peace to the Colonies, a clerk in his Majesty's Court of Chancery, and the Chief Justice of a British colony can never be suspected. Smith, therefore, must in the eyes of the public stand fully and clearly exculpated from a transaction of so dark and dangerous a kind.

He had at this time, however, nearly 100,000 acres of land in Vermont, held under New York grants, subsequent to those of New Hampshire; where, also, his three brothers, Thomas, John, and Joshua Hett, Smith, his relations, William Livingston, Esq., then Governor of New Jersey, James Duane, Esq., Peter R. Livingston, his brother-in-law, his relation Robert Livingston, then the American Minister for Foreign Affairs, his particular friends, John Morin Scott and Richard Morris, Esqs., all held, under the like grants, large and valuable tracts of land, and every one of these parties at that time was in open rebellion. All this property of these people must have been given up, had the proposals offered by Vermont been accepted by Great Britain, and that region formed into a separate colony. From these premises I make no observations, form no conclusions, nor draw any inferences. Facts speak louder than words. Let the public judge for themselves.

I have been told that in England, in cases of this kind, the opinions of the Attorney and Solicitor-Generals are always taken, and not those of the Lord Chief Justice. There was then upon the spot an Attorney and a Solicitor-General, both gentlemen of the law, eminent in their professions, of fair characters, and loyal principles. It may with great propriety be asked, why were not these gentlemen consulted upon this important occasion, instead of the Chief Justice? It was their business, not his. The loyalty of these gentlemen was never doubted, called in question, or even suspected. Can any man in the Colony of New York say so much in favor of the then Chief Justice?

Another anecdote shall be now related, which may, perhaps, surprise all civilized nations.

Upon the reduction of Charleston, in 1780, a Colonel Hayne,<sup>1</sup> of the rebel army, surrendered upon General Clinton's proclamation, renewed his oaths of allegiance, and was restored to, and protected in, the possession of his estate. During the whole of the war, fraud, hypocrisy, and deceit, marked the steps of rebellion. Perjury was not even looked upon as a crime when committed to serve the purposes of treason. Nay, the Presbyterian parsons had, in cases of this kind, when done for the good of the cause, assumed the power of absolution. Colonel Hayne, though he had surrendered, been pardoned, sworn allegiance to his sovereign, and put into full possession of his estate, as soon as Lord Cornwallis had left the Colony, and General Greene at the head of a rebel army entered it, raised a regiment, joined the rebels, and once more became an active partisan in the cause of treason. The events of war are always doubtful. It happened so in the present instance. In a skirmish between a party of loyalists and another of rebels, the

<sup>1</sup> Roderick McKenzie, in his strictures upon Colonel Tarleton's History of the War to the Southward, speaks of this affair thus: "Upon the entrance of General Greene into Carolina, Colonel Hayne accepted a commission in the American service in a secret manner. He then came to Charleston, renewed his oaths of allegiance, and at his own request, was appointed to the command of a corps of militia. He remained long enough in the garrison to obtain every intelligence he wanted, and then went off with his regiment to the Americans; within two miles of Charleston he seized a number of sick and wounded British soldiers, and was guilty of some acts of barbarity. He was, shortly after, taken in arms fighting against that Government which he had so recently sworn to support. A court of inquiry identified his person, and he was executed without a further trial. The Americans complained loudly of this as an infraction of the laws of nations, though they had executed, a short time before, the Adjutant-General of the British army upon the report of a Board of Officers only. Hayne was said to be a man of good character in private life, but private virtues could not attend public vices. If amiable manners, and the possession of every accomplishment which adorn the officer and the gentleman, could have averted an ignominious death, the lamented André would not have expired upon a gibbet."

latter was defeated, Hayne taken prisoner, and conducted to Charleston. This happened in 1781, at a time Lord Rawdon, as gallant a soldier, as worthy a nobleman, and as humane a gentleman, as the world ever produced, commanded in South Carolina. A second usurpation, in consequence of Lord Cornwallis' absence with the greatest part of the army, and Greene's entrance into the Colony at the head of a large body of rebels, had taken place, to quell which it became necessary to use more severity than had been usual. The King's cause in the province was in jeopardy. Experience had fully shown that lenity answered no purpose. Other methods were to be pursued. Severity became necessary. Examples were to be made, and Hayne was the first proper object that presented. He was, according to the law of arms, tried by a Court Martial, the charge fully established, convicted, and most deservedly executed. All civilized nations know, that an execution under such circumstances is not only justifiable, but, by the law military, strictly legal. Yet, Congress took up the affair with a high hand, declared, by a resolve, the execution a murder, and ordered Greene to retaliate by hanging the first officer of equal rank that should fall into his hands. This resolve was soon made known throughout the Colony by a proclamation issued and dispersed by the rebel General for the purpose. Happily no person was taken upon whom a retaliation could, with any propriety, take place, otherwise an honest man of the greatest merit might have been sacrificed, under pretence of appeasing the ghost of as great a villain, as infamous a traitor, and as perjured a scoundrel, as ever suffered under a gallows.

Hard service, great fatigue, and an unhealthy cli-

mate, having greatly injured his Lordship's health, he obtained leave to return to England. He took his passage in a packet. She unluckily fell in with, and was captured by, the French fleet, under the Compte de Grasse, bound up the Chesapeake, to assist their rebel allies in reducing the army then in Virginia under the command of Lord Cornwallis. The Compte took Lord Rawdon on board his own ship, and treated him with all that hospitality, civility, and politeness, for which his nation is remarkable, and such as was undoubtedly due to the character, profession, family, and merit, of his noble prisoner. The Compte arrived safely in the Chesapeake. Congress soon heard that Lord Rawdon was a prisoner on board the French fleet. Surprising to relate, yet an absolute, undeniable truth! They had the impudence, or assurance, or rather both, to send a committee on board the fleet, and demand of the Compte the delivery of his Lordship into their hands, that they might, as they declared, execute him by way of retaliation for the execution of Hayne. The Compte was a man of honour, a man of humanity, and a man of spirit, accompanied with a resolution and a firmness not to be trifled with. With a spirit that did himself and his country honour, he rejected with disdain the infamous demand. He told them that Congress had nothing to do with *his* prisoners. They might use their own as they pleased, but those of the Grande Monarque should be treated with all the politeness, humanity, and hospitality, practised among civilized nations. The committee was dismissed in a manner rather disgraceful. The Compte, at parting, told them that he was bound only to obey the orders, and pursue the directions, of his Sovereign. As for Congress, he had

nothing further to do with them, than his orders directed a co-operation with their forces. So far he should go, and no further. No orders, no demands, no requisitions of theirs, were obligatory upon him. The character of the Compte was amiable, his generosity unbounded, his hospitality great, his treatment to his prisoners generous, liberal, and magnanimous, worthy a commander under so great a monarch as Louis XVI. The Compte soon after sent Lord Rawdon to England, and his exchange was, in a short time, effected. In the winter of 1782, the Duke of Richmond, in a speech in the House of Lords, took up in high terms the execution of Hayne, and charged Lord Rawdon with being guilty, not only of a breach of the law of arms, but of a wanton, deliberate, malicious murder. His Grace being asked for the author of his intelligence, after many turns, twists, and evasions, at last acknowledged that he received his information in a letter from Philadelphia, that the letter was anonymous, had no signature, and that he was an utter stranger to the handwriting. Pretty evidence this, upon which to found an accusation in the highest tribunal in the British dominions, against a young nobleman of the first rank, character, family, and reputation, for a breach of the law of arms by the perpetration of a malicious, deliberate, premeditated, murder in cold blood!

When his Grace, publicly and openly, made this accusation, his Lordship was in Ireland. The Earl of Huntington, however, a near relation of his Lordship's, was present. The fact he was a stranger to, and of course could not contradict it. He instantly despatched an express to his Lordship, upon the receipt of which Lord Rawdon immediately left Ireland, and was in London in a few days. He wrote a letter to his Grace

couched in strong terms, complaining of the injustice done him, and of the cruel treatment he had received from his Grace when absent in a different kingdom, and demanded satisfaction. His Grace played off, insisted upon his right of saying what he pleased in Parliament without being accountable to any one. Several letters passed. His Lordship was not to be easily pacified. His character had been traduced, his honour called in question ; he had been taxed as a murderer, and charged with a breach of the law of arms. Nothing could more affect a soldier, especially a soldier high in rank, of a noble family, and of universal esteem in the army. His Lordship at length, tired of an epistolary war, sent to his Grace his ultimatum, which was to engage in a duel or apologize in the House of Lords, or suffer himself to be caned. The first, his Grace, though bred to arms, shuddered at, the last he thought rather disgraceful. He therefore chose the middle line, and consented to make an apology. His Lordship drew it himself, and his Grace repeated it as part of his speech in the House of Lords. When his Grace had finished he sat down. Lord Huntington arose, (who had the original in his hand), and complimented his Grace upon his good memory, by assuring the House that his Grace had not omitted a single word as penned and dictated by his noble relation, Lord Rawdon. Thus terminated an affair, disgraceful, scandalous, and dishonourable, to his Grace, and honourable to his Lordship. The public execrated the timidity of the former, while they poured out applause upon the valour, the spirit, the courage, and the resolution of the latter.

The following is the correspondence between Lord Rawdon and the Duke of Richmond :

## No. I.

*Lord RAWDON'S Letter to the Duke of RICHMOND, delivered to him by Lord LIGONIER, on Thursday evening, at seven o'clock, February 21, 1782.*

*To the Duke of RICHMOND.*

*Thursday Noon, February 21, 1782.*

MY LORD:

I am this moment arrived from Ireland, from whence I have been hastened from the illiberal advantage which you have taken of my absence. When I learned by the public papers, that an inquiry into the execution of Isaac Hayne, of South Carolina, was moved for before the House of Lords, I feared that their Lordships would not find any materials on which to decide their opinions; but from the unspotted justice of that high court of honour, I rested secure that vague surmises and unsupported insinuations, would not be permitted to affect the public character of a British officer. The House, as I conjectured, have rejected the suspicion with disdain. It now rests with me to notice such personal injury towards my private reputation, as could not become the subject of their Lordships' animadversion.

The expressions with which you, my Lord, introduced the motion, were as unnecessary to the business, as they are little reconcilable to the dignity of a Senator, the public spirit of a citizen, or the candour of a gentleman; of course, I feel them fit objects for my resentment. I do therefore require, that you, my Lord, shall make a public excuse, *in such manner, and in such terms, as I shall dictate,* for the scandalous imputation which you have thrown on my humanity; a quality which ought to be as dear in a soldier's estimation as valour itself. If your Grace had rather abet your malignity with your sword, I shall rejoice in bringing the matter to that issue. Besides the consideration of my own wrongs, I shall think myself the avenger of my brother officers in America, to whose security you have given an oblique attaint, by your affected fears for the consequences of General Greene's proclamation.

(Signed)

RAWDON

## No. II.

*Answer of the Duke of RICHMOND to Lord RAWDON'S letter taken in writing by Lord LIGONIER from the Duke's own mouth, received at nine o'clock on Thursday evening, February 21.*

The Duke declines receiving the letter, as it is couched in terms which he thinks unjustifiable. That, as it was never his intention, so he firmly believes, he made use of no expression that could be possibly misconstrued into a personal attack on Lord Rawdon. That he has no objection to referring to the Chancellor for his recollection and opinion on the subject, and that, if he can recollect any expression in the course of the debate, that could be applied as injurious to the character of Lord Rawdon, he will take an opportunity, in his place, of disavow-

ing such intention, provided Lord Rawdon desires the Duke so to do, in more admissible language. That Lord Rawdon has not specified any expression that is injurious to his character; consequently the Duke cannot at present give any other answer.

## No. III.

*Reply of Lord RAWDON to the Duke of RICHMOND'S answer, February 21, ten o'clock at night.*

Lord Rawdon will not admit any one expression in his letter to be unjustifiable, after the liberty which the Duke of Richmond has taken with his character. It is not of any particular word made use of by the Duke, that Lord Rawdon complains; but Lord Rawdon arraigns the general cast of the proceedings, which has publicly exposed him to the suspicion of wanton severity and abuse of power. That the Duke of Richmond should get up in his place in the House, and disavow the idea of casting any, the most distant insinuation upon Lord Rawdon's conduct, is the mode of excuse which Lord Rawdon would require. But the terms, as the letter mentioned, must be dictated by Lord Rawdon.

*Thursday, ten at night.*

## No. IV.

*Copy of a Paper in the Duke of RICHMOND'S handwriting brought to Lord RAWDON, by Lord LIGONIER and GENERAL CONWAY, on Friday noon, February 22.*

Lord Rawdon says, that he will not admit any one expression in his letter to be unjustifiable, after the liberty the Duke of Richmond has taken with his character! but as the fact is, that Lord Rawdon has been misinformed, and the Duke of Richmond did not take any liberty with Lord Rawdon's character, and has declared so to Lord Ligonier; he must persist in thinking several of the expressions in Lord Rawdon's letter very unjustifiable.

Lord Rawdon says, he does not complain of any particular word made use of by the Duke of Richmond; consequently the Duke of Richmond can have none to explain.

But Lord Rawdon says, he arraigns the general cast of the proceedings: this also the Duke of Richmond denies to have been in any degree personal to Lord Rawdon, which he took very particular pains to explain, in the opening of that business. In proof of this assertion, he has already expressed, and now repeats, his willingness to refer it to the Chancellor, whose name has been mentioned as having possibly conceived it otherwise, or to any unprejudiced Peer, whether the whole, or any part of the Duke of Richmond's conduct, had the least personality towards Lord Rawdon? and if, contrary to his expectations, anything of that nature can be imputed to him, he will be very ready, as it never was his intention, to say so in his place, upon a desire from Lord Rawdon, expressed in such terms as a man of honour can comply with; but a moment's reflection must satisfy Lord Rawdon, that the Duke of Richmond cannot suffer himself to be dictated to by any man,

and that such expressions can only serve to make it impossible for the Duke of Richmond to give Lord Rawdon the reasonable satisfaction, he is otherwise, of his own accord, desirous of doing, by disclaiming any intentions of attacking Lord Rawdon's personal character, if any unprejudiced Peer who was present, will say that there was the least reason for supposing he had done so.

## No. V.

*Ultimatum of Lord RAWDON, sent to the Duke of RICHMOND by Lord LIGONIER, on Friday evening, February 22.*

The Duke of Richmond forgets that Lord Rawdon does not *solicit*, but *require* satisfaction, for a gross injury offered (it matters not whether through design or carelessness), to his reputation. Were any reference necessary, the approved honour, as well as the distinguished ability of the Chancellor, would decide Lord Rawdon to submit the case to his opinion; but Lord Rawdon's feelings can alone determine whether any imputation may affect his character from the late proceedings of the Duke of Richmond. Lord Rawdon has left the Duke the only alternative his honour will allow.

The excuse required is here subjoined. It is expected that it shall be delivered in a full House, by the Duke in his place.

*Friday, three, afternoon.*

## APOLOGY.

*"I find that my motion for the inquiry into the execution of ISAAC HAYNE, "has been considered as provoking a suspicion against Lord RAWDON'S justice "and humanity. I solemnly protest that I did not conceive that it could throw "the most distant insinuation upon his Lordship's conduct; nor did I ever mean "to say anything that could have that tendency. Since I learn that the matter "is thought liable to bear a false construction, I declare that I am very sorry to "have introduced it upon authority, to which, (at the time of making of my "motion) I said I could affix no degree of credit."*

## No. VI.

*Memorandum of the Result.*

Lord Rawdon having requested Lord Ligonier to demand from the Duke of Richmond a decisive option upon the alternative proposed in the first letter, adhered to in the second message, and again ultimately insisted on in the message of last night, General Conway has this morning signified to Lord Rawdon, on the part of the Duke of Richmond, his Grace's unqualified acquiescence, in making the excuse as required by Lord Rawdon.

*Saturday, February 23, two o'clock, afternoon.*

## CHAPTER XI.

IN February, 1782, a total change in the British Ministry took place, and upon the motion of General Conway, the House of Commons resolved, "that who-  
"ever should advise his Majesty to carry on offensive  
"operations upon the Continent of America, should be  
"deemed an enemy to his country, and treated accord-  
"ingly." The new Ministry was formed out of that  
faction which had constantly opposed the American  
war, clogged the wheels of government, and corre-  
sponded with Congress upon all occasions. Lord Shel-  
burne in the House of Lords, and Charles James Fox  
in the Commons, were the leading members of the new  
administration. Mr. Edmund Burke was also one of  
the new ministry, who had openly and publicly in Par-  
liament, acknowledged that he carried on a regular  
correspondence with Dr. Franklin, the rebel ambassa-  
dor at the Court of France. The honest part of the  
nation now gave up America as totally lost to Great  
Britain. Nor were they wrong in their conjectures.  
The first act of the new ministry was to discharge a Mr.  
Laurens, (a most rebellious incendiary, who had been  
President of the rebel Congress, and was captured  
upon his passage to Holland as Congressional ambas-

sador to those States,) from the Tower, where he had been committed for a crime, which the twelve Judges of the Courts at Westminster had, upon a consultation, unanimously declared to be high treason. Seaton and Gouverneur, two British American subjects, were also confined in the Tower for treason, in adhering to, corresponding with, and furnishing the rebels in America with military stores, (of which the ministry was possessed of the fullest proof) and were also discharged. Laurens, indeed, gave trifling bail. Gouverneur and Seaton were enlarged without either bail, or mainprize, and were treated by the partisans of the new ministry, as a couple of young, suffering, persecuted, patriots. Early in March, Sir Henry Clinton was superseded, and Sir Guy Carleton appointed Commander-in-Chief in America. Most people were surprised that Sir Guy accepted the command, when a resolution was existing in full force, and upon the Journals of the House of Commons, which absolutely and totally precluded him from performing any military service in that country whatever, unless the rebels should attack his garrison, his entrenchments, or his lines, in which several cases, it seems, the ministry had given him permission to defend himself. Sir Guy left England in March, and arrived at New York in April, 1782. He was received by the inhabitants with every possible demonstration of joy. They crowded about him upon his landing, escorted him amidst repeated huzzas to his quarters, gave him three cheers when he entered the house, and quietly departed. In a few days thereafter, Sir Henry embarked for England. He was attended to the water-side by his own family only, accompanied by a few dependents, sycophants, and pensioned hirelings. Thus departed Sir Henry Clinton, after a four years com-

mand in America, laughed at by the rebels, despised by the British, and cursed by the loyalists.

Sir Guy now took the command, and in consequence of his orders, instantly enlarged from the prevost Sir James Jay, and Henry Brockholst Livingston, without even exacting a parole from either. The latter was a young man, the son of William Livingston, Esq., then titular Governor of New Jersey, a warm, fiery, hot-headed, zealous, persecuting rebel. He had been sent by Congress to Spain with despatches to John Jay, Esq., the unacknowledged American Ambassador to the Court of Madrid, his brother-in-law.<sup>1</sup> This young fellow, upon his return to America, had been taken prisoner and carried into New York. The former was a physician of some note, full brother to the John Jay, Esq., just mentioned. The father was the descendant of a French refugee, a gentleman of opulence, character, and reputation. James was his eldest son. He served his time in New York, and was then sent to England to complete his education in the medical profession. In 1756, he returned to New York, and entered into practice as a physician. Being haughty, proud, overbearing, supercilious, pedantic, vain, and ambitious, he soon quarrelled with the whole faculty. Extravagant in his charges, at enmity with all the profession, his practice at length became entirely confined among his own relations. Upon this, he determined to leave America and return to England. This was about the year 1760. When about leaving New York, he made an offer to the Governors of King's College of collect-

<sup>1</sup> Mr. Jay having been disappointed in two several attempts to marry in the De Lancey family, by way of retaliation took a wife in that of the Livingstons, a family ever opposed in politics to the De Lanceys, turned republican, espoused the Livingstons interest, and ever after opposed all legal government.

ing benefactions in England, Scotland, and Ireland, for that seminary. The terms being agreed upon, and the proper documents prepared, he sailed for England, being furnished with recommendatory letters, procured by the Governors of the College, to some of the principal gentlemen in all the opulent towns and cities in Great Britain and Ireland. Among others one to the Archbishop of Canterbury, and another to the First Lord of Trade and Plantations, who were both, by charter, Governors of the College. Being thus strongly recommended a Brief was soon obtained, people in general were liberal, large sums were contributed, his Majesty gave £500. Upon the conclusion of the war in 1763, the College addressed his Majesty upon the peace. The address was sent to James Jay. He presented it, and upon the occasion received the honor of Knighthood. He sent regular accounts of his receipts from time to time, and for a while, answered all the bills drawn upon him. A set of bills at length were drawn for £4,000. There was, by his own account, in his hands at this time above £4,000 collected for the use of the College. On pretence of some punctilios not being used in drawing the bills, he let them go to protest. This put the College to the expense of £200 (a damage of £20 per cent. being allowed on all protested bills). This occasioned a warm epistolary dispute between the Governors and Sir James. He was not to be convinced, continued obstinate, refused to come to a settlement, and spoke in high terms of the indelicacy with which he insisted he had been used by the College, and required that the fault should be acknowledged, his pardon asked, or not a farthing more should they have from him. Upon this a power of attorney was sent

over, with orders for a bill in Chancery to be filed, to compel Sir James to account for all the contributions he had received. This brought him to New York, and after a number of conferences, treaties, and proposals, with the interference of friends, the dispute was at length settled, part of the sum demanded was paid down, and good security given for the remainder. After this Sir James returned to England. It was but a short time before the commencement of the American troubles. Upon the rebellion actually breaking out, Sir James became a warm, a flaming partisan, and a most violent stickler for the American cause. He harangued the populace, applauded the conduct of the rebels, and abused the King, the Parliament, and the Ministry, upon all occasions. After matters in America became very serious, he left England and returned to that country. Being well known in the Province of New York, and his brother John being then a delegate in Congress, Chief Justice of New York under the usurpation, a Senator in the upper house, and of very considerable influence and interest among the rebels, Sir James was in a short time elected a Senator himself. He had never forgotten nor forgiven the Governors of the College, or at least those that had been most active in bringing him to an account for his peculation of the corporation's cash. Most of these gentlemen were steady loyalists, had large property, and lived within the British lines. Upon these Sir James meditated his revenge. He prevailed upon a member of the lower house, John Morin Scott, to bring in a bill of attainder and confiscation, in which care was taken to include all those Governors of the College who had taken an active part in compelling the Knight to a settlement. The Bill was moved for,

brought in, and after long, violent, and elaborate debates, rejected upon a division by a large majority. Sir James was not content. Upon the meeting of a new Assembly an attempt was again made, and again miscarried, though by a much less majority than the former. Sir James had perseverance, and was determined not to lose sight of his dear object. Being artful, designing, and insinuating, he intrigued with the upper house, and with much difficulty prevailed upon a small majority to adopt his scheme. This done, the bill was brought in and passed, though not without warm debates, and a violent opposition. Sir James was sent down with the bill to the lower house. Upon this occasion he spoke for more than an hour, endeavoured to point out the necessity of the bill, and the ill consequences which would arise to the State, the Union, and the confederacy, if the bill should be negatived. This harangue answered his purpose, the bill was passed, received the Governor's consent, and became a law of the State. Sir James' revenge was now complete. No less than *fourteen* Governors of the College, and all the active ones in the dispute with Sir James, were included. Sir James was taken prisoner early in 1782. He had been in the neighbourhood of the British lines for several days. A party of Skinner's Brigade getting intelligence where he lodged, surrounded the house at midnight, took him prisoner, carried him to New York, and lodged him in the prevost. Here Sir Guy Carleton upon his arrival found him, and from hence he liberated him, without even taking his parole.

Notwithstanding Sir Guy was restrained by the resolution of the House of Commons, from carrying on offensive operations against the rebels in America,

he commenced hostilities in a different quarter, and carried on active, vigorous, and offensive, operations against all the public departments in the army; and, in a short time, broke, discharged, dismissed, and cashiered, such a number of supernumerary barrack-masters, land commissaries, water commissaries, forage-masters, cattle commissaries, cattle feeders, hay collectors, hay inspectors, hay weighers, wood inspectors, timber commissaries, board inspectors, refugee examiners, refugee provision providers, and refugee ration deliverers, commissaries of American, of French, of Dutch, and of Spanish, prisoners, naval commissaries, and military commissaries, with such a numerous train of clerks, deputy clerks, and other dependents upon the several offices aforesaid, with pensioners and place-men, as saved the nation in the course of one year only, *about two millions sterling*. Had this gentleman been appointed Commander-in-Chief at first, the rebellion would soon have been finished, with one-third of the expense which the American war cost the nation, besides her disgrace, the loss of thirteen valuable colonies, and a scandalous dismemberment of the British empire.

Some short time before the arrival of Sir Guy at New York, the "Associated Loyalists," a corps independent of the army, a kind of corporation or body politic, established upon an application of their own, by Lord George Germaine, then Secretary of State for the American Department, ordered a party of their own body to take out of the provost one Huddy, a prisoner of theirs, a Lieutenant in a Jersey regiment of six months' men, carry him to Sandy Hook, and hang him. The order was executed. Huddy was hung. Information of this was soon given to Washington,

who sent a flag to General Clinton, and demanded in peremptory terms, that the executioner of Huddy, or a person of equal rank, should be sent out in order to retaliate upon, for, as he termed it, the murder of Huddy. In this, Washington showed spirit, decision, and resolution. But then Washington knew his man. Clinton was one of the most irresolute, timid, stupid, and ignorant, animals in the world. It is really surprising that a great king should have trusted such a man with the command of a great army to quell a great, a dangerous, and a stubborn rebellion, in which the welfare of the nation and the honour of the Crown were so immediately concerned. Clinton was at a loss what to do. His council were consulted. Little comfort was obtained. All was amazement, all was terror, and all was affright, at head-quarters. The directors of the Associated Loyalists were, in this dilemma, fright, and consternation, called upon. What Clinton had to fear, I know not. New York was as strong as it could be made. He had in the city and its environs 20,000 men, and it was surrounded by men-of-war. Washington's army did not consist of more than 10,000 men, and was in the Highlands, sixty miles off. Yet the General appeared to be panic-struck at Washington's demand. The Board of Associated Loyalists met. The whole affair was laid before them. These gentry all shrank from the charge. Some declared it a falsehood, some attempted to justify it as an act necessary and politic by way of retaliation, and others pretended a total ignorance of the whole transaction. Governor Franklin, of New Jersey, however, who was at the head of the Board, left New York and came to England while this business was transacting. Sir Guy arrived, took the command, and Clinton sailed for England. Wash-

ington now renewed his demand in a letter to Sir Guy, and peremptorily insisted upon a compliance with it. The affair was new to Sir Guy. Until the receipt of Washington's letter he had never heard a word of the matter. He made a particular inquiry in regard to the whole transaction. He condemned the step as cruel, unjust, illegal, unchristian, and dishonourable. Several letters between Sir Guy and Washington passed upon this occasion. Sir Guy endeavoured to effect an amicable accommodation. He told Washington in his letters, that he was sent out to conciliate matters; that his orders were to carry on no offensive operations against the Americans. This he urged, enlarged upon, and pressed home, in his answers to Washington's letters. He also observed that in all probability a peace between Great Britain and America would soon take place. That the Ministry who had advised and carried on the American war were displaced. That the friends and advocates of America were their successors. Sir Guy stated that matters being thus circumstanced, Great Britain and America upon the eve of a peace, a reconciliation, upon honourable terms wished for on both sides, the warm friends of America in England possessing the whole powers of government, the ear of the king, and the confidence of Parliament, were bent upon serving America, and putting an end to the war at all events. He further added, that after the most minute inquiry he was not able to find out who the real executioner was, or by whose particular order the deed was done. That to deliver up an innocent man to suffer in the room of another would be cruel, unjust, and inconsistent with the character of a Christian. That all matters properly considered, Sir Guy hoped General Washington

would let the affair rest, sleep, and die away. Washington had hitherto dealt with British Generals, whose irresolution, indecision, and timidity, were such that with 6,000 men, and not a ship, he frequently bullied them when at the head of 30,000 veterans and a victorious navy. Washington thought he could play the same game, dance the same jig, and with as much ease insult Sir Guy. In this he was, however, mistaken. Washington appeared resolute and positive, he insisted that the murderer of Huddy should be delivered up, or a person of equal rank, to be executed in retaliation for the death of Huddy. Matters were now coming to a crisis. Sir Guy was as positive, and had as much spirit and resolution, attended with at least as much virtue and delicacy, as had the rebel hero. He positively and absolutely refused to comply with the requisition, desired Washington to point out the man by name, and said, that in such case, he should be apprehended, tried, and if convicted, properly punished. But that such trial should be in a regular court established by Britain, under the law military, and in no other manner whatever. Washington, finding that in Sir Guy he had neither Sir William Howe nor Sir Harry Clinton to deal with, dropped the correspondence, but not his design. When a man breaks through the ties of honour, abandons his king by violating his oath of allegiance and fidelity, he will go any lengths to serve his purposes, show his power, or gratify his vanity. As a specimen of this, mark the sequel.

Sir Guy having declined to deliver into the hands of the rebel General the supposed executioner of Huddy, or an officer of equal rank, to be by him executed in retaliation for the death of Huddy, he grew very angry. Sir Guy having refused Washington's de-

mand, a different mode was adopted, and as well to the scandal of rebels, as of their great and good allies, the French. It is to be wished the record of it may be handed down to the most distant generations. It is shortly this. In October, 1781, the rebel army under Washington, the French army from Rhode Island under Rochambeau, and a French army under Monsieur St. Simon from the West Indies, laid siege to York Town and Gloucester in Virginia, which Lord Cornwallis had fortified, and where he commanded. The enemy being amazingly superior in numbers, the British works knocked to pieces, and no hopes of relief from New York, his Lordship was under a necessity of proposing terms of capitulation. A treaty was opened, and the articles soon agreed to. The garrison surrendered as prisoners of war, they were to be treated with humanity, the officers to be upon parole, to wear their side arms, not to be separated from the men, and to be exchanged as soon as possible. These articles were signed on the part of the allies, by Washington, Rochambeau, St. Simon, and the Compte De Grasse, who commanded the French fleet; and on the part of the English by Lord Cornwallis, and Captain Symonds, who commanded a few frigates in the river. His Lordship, and all the field officers, had permission to go to New York upon their paroles; a few Majors, all the Captains and subalterns, remained in Virginia with the privates. Thus stood matters with respect to Lord Cornwallis's captured army, at the time that Sir Guy refused to deliver up an officer to be hanged as a retaliation for the death of Huddy. Washington finding Sir Guy resolute and positive, took, to the surprise of all civilized nations, nay, to the astonishment of all mankind, rebels ex-

cepted, this most extraordinary step. He sent to Virginia, ordered all the British Captains (then upon parole under a solemn capitulation) to be called together, and when collected, directed that they should cast lots which of them should be executed by way of retaliation for the execution of Huddy. This the Captains refused to do. Upon this refusal, Washington ordered an officer of his own to cast the lots. He did so, and the lot fell upon Captain Asgill of the Guards, as virtuous, as honest, and as brave a youth as ever bore a commission, the only son of Sir John Asgill, a principal banker in the city of London.

The British officers, then prisoners in Virginia, sent an express upon this serious and extraordinary proceeding to Monsieur de Rochambeau, then at Williamsburgh, one of the Generals who signed the capitulation, and of course a guarantor for the punctual, faithful, and honourable performance of it. The despatch was delivered. No answer was returned. The French are remarkable for politeness. In this instance, however, Monsieur de Rochambeau was a manifest exception. He had served so long with rebels, the allies of his Sovereign, that he had imbibed all their principles, contracted all their habits, and was as deaf to the feelings of humanity, as the most obdurate and inveterate rebel within the thirteen revolted Colonies. In the mean time Captain Asgill was carried in triumph, escorted by a rebel guard above 200 miles, from Virginia to the rebel camp in New Jersey. Captain Asgill was not permitted to come into the presence of Washington, but instantly put into a prison, deprived the liberty of pen, ink and paper, his servant refused admittance to him, and the diet allowed him bread and water, with once a week a scanty allowance of animal food. This

bespeaks the humanity, the politeness, the virtue of Washington. Captain Asgill had but one window in his apartment, out of which he could peep at the sun, or draw in fresh air. To punish the unhappy youth as much as possible, the rebel Chief ordered a gallows erected, 30 feet high, directly in front of, and at a small distance from the window, with this inscription in capitals, "Erected for the Execution of Captain Asgill." This gallows and this inscription presented themselves to the Captain's eyes whenever he approached the window, which for the benefit of fresh air must have been often. This was murdering a man by inches. It was a piece of barbarity that none but a rebel could be guilty of. Instant execution would soon have put the youth out of his pain, it would have been lenity, mercy, kindness, nay, it would have been generosity. Instead of suffering one death by an immediate execution, the unhappy young soldier must, in contemplation, have experienced one every day. Every morning that he arose, he naturally supposed was the last of his existence. He never looked out of his window but he saw the tremendous instrument of death, with the more tremendous inscription, "For the Execution of Captain Asgill." At conduct like this all Christians must shudder, and execrate the unfeeling severity which could be guilty of so deliberate and wanton an act of cruelty. Whether Washington's real intention was to have executed Captain Asgill, is a doubt. That his design was, at least, to frighten Sir Guy into a compliance with his demand as to the execution of Huddy, there can be no doubt. In this he was, however, mistaken. Sir Guy was not to be bullied, frightened, nor insulted. To the surprise of every one Captain Asgill continued in jail for a long time, and no execution took

place. The particulars at length reached England. Lady Asgill applied to the Queen of France in behalf of her only son, her favourite child. The Queen listened to the tears of a disconsolate mother, she applied to her royal consort, and he ordered his ambassador at Philadelphia to demand his release. This had the desired effect. Neither Congress nor Washington dared trifle with their great and good ally. The Captain was therefore discharged, sent to New York, and returned, as from the grave, to his parents, his relations, and his friends in England.

In the summer of 1782 the new ministry, under a pretence of reconciliation with the American rebels, ordered Charleston, the capital of South Carolina, and Savannah, the capital of Georgia, to be evacuated, the troops withdrawn, the stores removed, and possession delivered to rebellion. These two garrisons contained thousands of the native inhabitants, many of whom had been in arms, or rendered other essential services to the Crown, in the course of the war. Numbers of them had fled from their estates in the country, and put themselves under the protection of the army, to avoid the persecution of the rebels; many, in consequence of royal proclamations offering them pardons and protection. These garrisons were, notwithstanding, to be evacuated without a single term, a stipulation, or a condition, in favour of the inhabitants. No provision was made for such as had borne arms, or served in offices, and were therefore obliged to leave with the army. The commanders of the two garrisons did everything within their power, to make matters as easy as possible to these poor unfortunate people, whom the Ministry were abandoning, and leaving at the mercy of their enemies, for no other

crime than steady loyalty to their Sovereign, and a warm attachment to the constitution of Britain.

To provide in some measure for these poor wretches, the commanders of the garrisons (though contrary to their orders) protracted the evacuations as long as they possibly could, without offending the Ministry. Transports were procured, and several hundreds with their personal property went to St. Augustine, in Florida, the Governor of which granted each family a tract of land, upon which they sat down and began the world anew. Numbers went to the Bahama Islands, others to the Summer Islands, to Jamaica, to Nova Scotia, to Newfoundland, and to Canada. But such a number were still left behind, that properly to describe their situation upon the evacuations is scarcely possible. There, were old grey-headed men and women, husbands and wives with large families of little children, women with infants at their breasts, poor widows whose husbands had lost their lives in the service of their King and country, with half a dozen half starved bantlings taggling at their skirts, taking leave of their friends. Here, you saw people who had lived all their days in affluence, (though not in luxury) leaving their real estates, their houses, stores, ships, and improvements, and hurrying on board the transports with what little household goods they had been able to save. In every street were to be seen men, women, and children wringing their hands, lamenting the situation of those who were about leaving the country, and the more dreadful situation of such who were either unable to leave, or were determined, rather than run the risk of starving in distant lands, to throw themselves upon, and trust to, the mercy of their persecutors, their inveterate enemies, the rebels of America. Their fears and ap-

prehensions were soon realized. No sooner had the evacuation taken place at Charleston than the rebels, like so many furies, or rather devils, entered the town, and a scene ensued, the very repetition of which is shocking to the ears of humanity. The Loyalists were seized, hove into dungeons, prisons, and prevosts. Some were tied up and whipped, others were tarred and feathered; some were dragged to horse-ponds and drenched till near dead, others were carried about the town in carts with labels upon their breasts and backs with the word "Tory," in capitals, written thereon. All the Loyalists were turned out of their houses and obliged to sleep in the streets and fields, their covering the canopy of heaven. A universal plunder of the friends to government took place, and, to complete the scene, a gallows was erected upon the quay facing the harbour, and twenty-four reputable Loyalists hanged in sight of the British fleet, with the army and refugees on board. This account of the evacuation of Charleston I had from a British officer who was upon the spot, ashore at the time, and an eye-witness to the whole. No doubt the Loyalists upon the evacuation of Savannah shared the same fate with their brethren in South Carolina.

## CHAPTER XII.

THE next thing the new Ministry had to do, was to patch up a peace with their cordial friends, the rebels of America. For this purpose the Congress had Commissioners at Paris, to wit, Benjamin Franklin, John Adams, Henry Laurens, and John Jay, Esqs., four as artful and designing men as the thirteen revolted Colonies could boast of. As a match for these the British Ministry sent a Mr. Richard Oswald, originally a baker of bread, by which he made his fortune as a contractor for the British army in Germany during the last war. His co-commissioner upon this serious business was one Caleb Whitesford, a vintner in the city.<sup>1</sup> These were the people intrusted with the making of a peace, upon which the welfare, the dignity, the honour, nay, the salvation of Great Britain, in some measure depended. The negotiation was kept on foot long enough to serve the purposes of Malagrida. He

<sup>1</sup> The American Commissioners objected to the form of Oswald's commission, and refused to treat unless it was altered. Oswald, upon this, desired Jay to draw such a one as would come up to his own wishes, which was done and sent to England, and so bent were the new Ministry upon a peace, that Jay's commission went through all the different forms, and was transmitted to Paris in a very few days, so that the British Commissioners absolutely acted under a commission dictated by the American Commissioners.

dabbled in the stocks, and realized more than £100,000 sterling. This done, the business went on apace, and, without entering into any preliminary articles to serve as a basis and foundation upon which a peace adequate and honourable might be formed and obtained, certain "provisional articles" were entered into, and signed by the commissioners on each side, on the 30th of November, 1782, which were to be "inserted in, and "constitute, the treaty of peace proposed to be concluded between Great Britain and the United States "of America; but which were not to be conclusive "until peace should be settled between Great Britain "and France." The preamble to these "provisional articles" recites that the plan was to form a peace upon principles of *liberal equity and reciprocity*. On the 20th of January, 1783, preliminary articles of peace were agreed upon, signed, and exchanged between the Ministers Plenipotentiary of Great Britain and France; upon which the "provisional articles" between Great Britain and America became valid, effectual, binding upon the parties, and in full force as the treaty of peace.

By the first of the "provisional articles" Great Britain acknowledges the thirteen rebel colonies "to be free, "sovereign, and independent States," treats with them as such, and relinquishes all claim to the government, property, and territorial rights, of the same.

By the second article, the boundaries between Great Britain and the Independent States in America are ascertained and settled, by which the new Ministry ceded all the Western posts, gave the Americans the free navigation of all the lakes, and also ceded a tract of land never included in the bounds of the Colonies nor ever claimed by the revolters, comprehending as many

square miles as would cover above one half of all Europe. In which were also included, all the towns, castles, settlements, improvements, and hunting-grounds of the faithful Indians, allies of Great Britain, who had assisted her in all her wars from the first settlement of America down to the very conclusion of this disgraceful peace. In speaking of this article, a judicious, sensible writer expresses himself thus: "Few people are able to form an adequate idea of "the extent of the districts ceded to the United States "of America at the conclusion of the late war. It will "not be amiss, therefore, to compare them with coun- "tries with whose situation and extent we are more "acquainted. The following measurements are made "with accuracy.

"The river Ohio is navigable from Fort Pitt to its "mouth, which is 1164 miles. The lands on the banks "of Ohio, and between the Alleghany mountains, the "lakes Ontario and Erie, and the Illinois and Mississip- "pi rivers, contain 233,200 square miles, nearly equal to "Great Britain and France, whose contents are 235,- "237 square miles.

"The lands between the Illinois, lakes Huron and "Superior, and the Mississippi at the falls of St. An- "thony, contain 129,030 square miles, nearly equal to "Great Britain and Ireland, which are 131,800 square "miles.

"The lands from St. Anthony's Falls to the south "line, from the Lake of the Woods to the head of "the Mississippi, contain 60,000 square miles, which "is more than Holland, Flanders, and Ireland, which "are 57,908 square miles.

"The thirteen States of America contain 207,050 "square miles, nearly as large as all Germany, Flan-

" ders, Holland, and Switzerland, which contain 207,483 " square miles."

There does not appear to be much "reciprocity" in this article. It may with propriety be asked, what right had Great Britain to dispose of the lands and territories of her Indian allies? They were not the subjects of Great Britain. They were distinct, separate nations, had a government, religion, and laws, of their own. They were no parties to the peace. They had no Commissioners at Paris. Is this article, then, binding upon them, or not? A reasonable, impartial, and an unprejudiced man would answer in the negative.

By the third article the people of the United States are to enjoy unmolested, "the right to take fish of every kind upon the Great Bank, and all the other banks of Newfoundland, in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants used to fish; and also to take fish of every kind on such part of the coast of Newfoundland as British fishermen should; also, in the coasts, bays, and creeks of all other his Britannic Majesty's dominions in America, with full liberty to dry and cure fish in any of the unsettled bays, harbours, and creeks in Nova Scotia, the Magdalen Islands, and Labrador." I defy the most judicious negotiator that ever existed to point out the "reciprocity" contained in this article.

The fourth article stipulates, "that creditors on either side shall meet with no lawful impediment to the recovery of the full value, in sterling money, of all bona fide debts theretofore contracted." This article is most undoubtedly reciprocal. "Bona fide debts on both sides are to be recovered in sterling money," but mark the event. Some of the States immediately

passed acts, declaring that "no debts due to the British "merchants, and contracted prior to the war, should "be paid," and prohibiting the courts of law from cognizance of any actions brought for the recovery of such debts. By this article British subjects were left open to prosecutions by the Americans for debts due to them, while by their acts of Assembly the British were absolutely excluded from bringing actions against Americans. In other of the States, where the Legislatures did not take up the matter, they formed committees and entered into resolutions similar to the acts of the other States, which resolutions had all the force of laws, as their Legislatures, Civil Magistrates, and courts of justice had it not in their power, or more likely not in their inclination, to put an end to, or suppress, such committees, or render their illegal combinations and unjust resolutions ineffectual. The "reciprocity" of this article was, therefore, by the American Legislatures and the resolutions of their committees completely done away.

By the fifth article it was agreed, "that Congress "should earnestly recommend to the Legislatures of "the several States to provide for the restitution of all "estates, rights, and properties which had been confiscated, belonging to *real British subjects*, and also of "the estates, rights, and properties of persons resident "in districts in the possession of his Majesty's arms, "and who had not borne arms against the said United "States. And that persons of any other distinction "should have liberty to go into any part of the said "United States and there remain for twelve months, "unmolested in their endeavours to obtain the restitution "of their estates, which might have been confiscated, "and that Congress should earnestly recommend to

"the several States a reconsideration and revision of  
"all laws regarding the premises, so as to render said  
"laws perfectly consistent, not only with justice and  
"equity, but with that spirit of conciliation, which on  
"the return of the blessings of peace should univer-  
"sally prevail. And that Congress should also  
"earnestly recommend to the several States that the  
"estates of such last mentioned persons should be re-  
"stored to them, they refunding to the possessors the  
"bona fide price which had been paid for the purchases  
"after their confiscation."

From the institution of the first Congress in September, 1774, down to the conclusion of the peace in 1783, a "recommendation of Congress" was looked upon within the thirteen colonies as binding as a law. A person that would have disputed its validity, opposed its operation, or even hinted at its illegality, would have been deemed an enemy to his country, held up and advertised as such, turned out to be baited by the mob, tarred and feathered, carted, imprisoned, plundered, and perhaps murdered. An army was raised, clothed, fed, and paid, upon "a recommendation of Congress." All the Loyalists within the thirteen colonies were disarmed, numbers of them imprisoned, some plundered, some murdered, and hundreds transported into the interior parts of the different provinces, all upon "recommendations from Congress." Upon "recommendations from Congress" millions and millions of paper money were struck, made a legal tender, and the people obliged to take it in all cases, and upon all occasions, upon pain of the anathemas of Congress. These were as much dreaded and feared within the colonies as ever those of the Pope were in France, Spain, Italy, or Portugal. All the governments within the thirteen colonies were

abolished by "a recommendation from Congress." Upon the same authority new constitutions were formed, all the officers of government displaced, and new ones in every department appointed. In a word, "a recommendation from Congress" upon any occasion prior to the peace was esteemed as sacred, as obligatory, and of as much validity, by the American revolters as ever was *magna charta* by the people of England. This was pressed upon Mr. Oswald by the American Commissioners during the negotiation of the treaty, who declared that "a recommendation from Congress" to the States would operate as an absolute law, that it would be revered and complied with in every tittle, that not a dispute would arise about it. But on the contrary, it would be construed in the most liberal manner, and carried into execution by the several States with pleasure, alacrity, and every punctilio of the nicest honour. If they knew better, it was a horrid deception upon the bread-baker and his co-commissioner, the vintner. If they really believed what they asserted, they were abominably deceived themselves.

When the British Commissioners had prevailed upon those of America to insert in this Article, "That Congress should earnestly recommend, &c.," they thought a great point was gained. That peace was to take place in the most amicable manner, the confiscated estates within the British lines restored, all persons to return to their usual places of abode, and repurchase their estates that had been sold, a revision of all laws to take place, everything to be done consistent with justice and equity, and a perfect conciliation to prevail upon the return of the blessings of peace. Sanguine as Mr. Oswald was, and pleased at this great point gained, woeful experience not long

after fully convinced him of his mistake. No sooner did the Loyalists, who had taken protection within the British lines during the war, attempt to return into their respective provinces, and former places of abode, in consequence of this article, than they were taken up, and insulted. Some were tarred and feathered, many tied up and whipped in the most inhuman manner, while others were actually hamstringed, and sent back into the British lines. At this very time, there were within the British lines, in virtue of this very Article, above 2,500 people who had actually been in arms against Great Britain, and were neither insulted, abused, nor ill-treated. Such was the difference between Loyalists and rebels. Committees were formed in the several States, and resolutions of the most violent kind entered into, against these unhappy people, and against all others who should harbour, protect, or assist them. They were declared to be "enemies "to their country, and to the rights of mankind," and as such, should not be suffered to live within the States. So little did the Americans regard the Articles of peace, articles made by their own Commissioners, duly empowered, and afterwards solemnly ratified by Congress. The "recommendation," which the American Commissioners had stipulated should be made by Congress to the several States in favour of the several descriptions, or distinctions, of men mentioned in this Article, was protracted by Congress for a long time after the signing and transmission of the provisional Articles to America; nay, even after their ratification by Congress. Sir Guy Carleton pressed in strong terms, by letters at different times to Congress, to the Governor of the State of New York, and to the Legislature of the same, without effect. Frivolous or

quibbling answers were given. Nothing direct could be gotten from any of them. At length, however, in January, 1784, about two months after the British army had left New York, Congress transmitted to the several Governors of the several States, to lay before their respective Legislatures, copies of this Article, so far as related to the "recommendation" which the Commissioners at Paris had engaged should be by them earnestly recommended to the consideration of the several States. Copies were accordingly laid by the several Governors before the respective Legislatures, with letters from Congress enclosing them, mentioning only that it was a true copy of the 5th of the provisional Articles, and desiring that the same might be laid before their several Assemblies. No "recommendation" from Congress according to the spirit, the design, and meaning of the Articles, accompanied it. Nor did the respective Governors, in their several messages to their respective Assemblies, mention anything more than, "that the enclosed was a copy of the 5th Article "of the peace, and that it was the desire of Congress "to have it communicated to them respectively for "their consideration." The Assemblies made short work of the matter. It was obvious to them, from the method taken of its transmission by Congress to the several Governors, the contents of the letters enclosing the same, and the messages from the respective Governors, that it was not the wish, the intent, nor design of Congress, that the Article should be carried into execution. Most of the Assemblies resolved, (some indeed declared that the Commissioners appointed by Congress had no power to make a peace; that the Congress had no authority to appoint Commissioners, and that their so doing was a direct violation of the

Articles of Confederation jointly entered into by all the States), that the Commissioners had only engaged that Congress should "recommend" the consideration of the Article to the several Legislatures of the several States, that the engagement was fully complied with, that Congress had done their duty, and had nothing further to do in the matter. That a compliance, or a non-compliance with the Article, was entirely in the breast of the several Legislatures. A compliance was therefore negatived, by which this Article, intended for the benefit of the Loyalists, by an artful contrivance between the American Commissioners, Congress, the Governors, and the Assemblies, was rendered nugatory and ineffectual.<sup>1</sup> Not a law did they revise, not a law did they alter, nor did they repeal a law. Not a person was suffered to repurchase his confiscated estate, and those estates which had been confiscated that lay within the British lines at New York, which the rebel powers had never disposed of, and which continued in possession of the owners until the evacuation took place, and which it was evidently the design, the meaning, and the spirit of this Article to have secured to the possessors, (the act of attainder notwithstanding-

<sup>1</sup> Gordon says, "the non-compliance with this Article, was impolitic in the States, as it forced away between 20,000 and 30,000 persons to Nova Scotia, all of whom might, by a temperate conduct and a noble spirit of forgiveness, have been rendered good subjects to the United States." He might also have added, that they carried away with them *nearly a million in hard money*. Gordon then goes on and says, "The aversion of the people to a compliance with the 5th provisional Article did not proceed altogether from the rancour of the heart. But interest, influence, debts which had never been contracted were claimed and paid out of confiscated estates; in some instances, by those who were debtors to the persons whose estates were confiscated. Confiscated property, to a considerable amount, had been purchased by many, at a trifling expense. Had the recommendation been passed and complied with, scenes of notorious injustice would have been laid open, the most beneficial bargains superseded, and the payment of a number of simple contract, and bond debts, speedily required."

ing) were seized upon, in violation of the treaty, of law, of justice, of honour, and of equity ; laid out into lots and farms ; sold ; titles given under the act of attainer ; and the money appropriated to the use of the State. So much for the dignity, the honour, and faith, of the American "patriots!"

By this Article it was also agreed, that "all persons "who had any interest in confiscated lands, either by "debts, marriage settlements, or otherwise, should meet "with no lawful impediment in the prosecution of their "just rights." This clause had no effect. No action was suffered to be brought for the recovery of a debt, for the payment of which confiscated estates were by this clause made liable. It is true there were several instances in the State of New York, in which debts were paid out of confiscated estates, but then such debts were always due, to what the rebels called "Whigs," but none were ever paid to a Loyalist, or what they denominated a "Tory." This clause was therefore serviceable only to the rebels, not to the Loyalists. The former were paid out of confiscated estates, the latter were totally excluded. The clause was evidently intended for the benefit of all creditors, yet, none but rebels were suffered to take the advantage of it. This is what the Commissioners, upon making the peace, termed "*Reciprocity*."

So far was the Legislature of New York from complying with that part of this Article, which mentions a "reconsideration or revision of all such acts, or laws, so "as to render such acts, or laws, perfectly consistent, "not only with justice and equity, but with that spirit "of conciliation, which on the return of the blessings "of peace should universally prevail," that they not only rejected the petitions of several gentlemen in

whose favour this Article was manifestly calculated to operate, but on the 12th of May, 1784, *after the treaty had been solemnly ratified by Congress, and in contempt of this Article*, they passed an Act, by which they declared, "that all persons who were resident in that State, " or any of the United States, on the 9th of July, 1776, " (the day on which Independence was declared in " New York) and who had at any time since that day " accepted, or held, commissions under the King of " Great Britain, or who had been concerned in fitting " out any privateer, or vessel of war, to cruise against, " or commit hostilities upon, the property or the per- " sons of the citizens of the United States, or their " allies, or who had served on board such privateers, " as Captains, Lieutenants, or Masters, or who had " exercised any office in the Courts of Police, or any " office in the Court of Admiralty, established under " the authority of Great Britain, and also all those " who were resident in any other of the United States " (except New York) on the 9th of July, 1776, who " had at any time, after that day, and during the war, " removed from the States in which they were respect- " ively resident at that time, and gone to, and put " themselves under, the protection of Great Britain. " And all those who were resident in the State of New " York on the day and year aforesaid, and who had " voluntarily gone to, remained with, or joined Great " Britain, at any time during the war, or had left the " State before the 25th of November, 1783, (when the " total evacuation took place) and had not returned, or " if found thereafter within the State, should, on con- " viction, be adjudged guilty of *mispriision of treason.*"

It was also enacted "that all persons falling "under any of the descriptions before mentioned,

"should be forever thereafter disqualified from enjoying any Legislative, Judicial, or Executive, office within the State, and forever debarred from voting at an election for any officer whatever." This law actually disqualified more than two-thirds of all the inhabitants of the City and County of New York, of the County of Richmond, and of the County of Kings, about a fifth part of the inhabitants of Suffolk, nine-tenths of those of Queens, and the whole of those of the Borough of Westchester, from being either electors, or elected, at the next approaching election. For this the State of New York had its reasons. The next assembly laid a tax of £150,000 upon the inhabitants that lived within the British lines during the war, to be paid in gold and silver, (Continental paper did not answer the purpose). In assessing this tax the Loyalists suffered amazingly, and the rebels were indulged. There were frequent instances where rebels possessed of estates worth £10,000, were taxed at £10, while a Loyalist worth £1,000 was taxed at £100. What occasioned the rebellion? A power claimed by Great Britain to tax America without representatives in Parliament of her own election. But no sooner had America obtained her Independency, and the Colonies recognized by Great Britain as Independent States, than they pursued the very steps of the British House of Commons, the claims of which they had been opposing for more than eight years, and passed an act depriving a large body of people of the rights of election, declaring them forever disqualified from ever being either electors or elected, and then laying a tax upon them of £150,000, to be paid in the course of a year, and that in hard money. Whenever I think of this matter, it reminds me of the first settlers in New

England. They fled, as they said, to avoid the persecution of Bishops. They were all Puritans. No sooner were their settlements in some kind of forwardness than they turned Bishops themselves, erected ecclesiastical courts, and persecuted all the Episcopalian, Quakers, and Anabaptists, under their jurisdiction, because they did not worship the Almighty in the same form in which they themselves did. They imprisoned, whipped, cut off ears, cut out tongues, and banished all, never to return on pain of death. Some were foolish enough to return and suffered accordingly. Thus the poor persecuted *Saints*, who had fled from England to avoid Episcopal tyranny, no sooner got the power in their own hands than they became the greatest persecutors of any Protestant sect in Christendom.

In the same manner did the New York rebels act. They went to war because taxed by Great Britain unrepresented. Yet, no sooner was their independency established, and recognized by the King, the Lords, and Commons, than they disqualified a large body of people from being either electors, or elected, and then laid a tax of 150,000 pounds upon them, payable in a year, in gold or silver. And so much partiality was shown in the assessment of this tax, that those persons friendly to rebellion, who lived within the British lines during the war, were rated from 40 shillings to 16 pounds, while the unfortunate Loyalists whose estates were not superior to the others, were assessed from 50 pounds to 1,000 pounds. This much for the justice, the honour, the virtue, of the patriots of America, who waged a bloody war with Great Britain, in order, as they asserted, "to defend the rights and protect the liberties of mankind," because they were unrepresented in the British Parliament, and that Par-

liament had laid a duty of three pence upon every pound of tea exported from England and sold in America.

By the 6th Article it was agreed, "that no future confiscations should be made, nor prosecutions commenced, against any person, or persons, for, or by reason of, the part which, he, or they, might have taken during the war, and that no person should on that account suffer any future loss or damage, either in his person, liberty, or property." Yet, no sooner was it known in the State of New York, that a peace was concluded, and the articles published, than the alarm bell was rung. This Article was to be, at all events, evaded. It was too much in favour of the Loyalists. It was therefore, by some means or another, to be rendered nugatory, and of no effect. A hint was given to the next grand jury attending the Supreme Court of the State, of their power by virtue of several clauses in the act of attainder and confiscation which was still in full force. As the jurors consisted wholly of rebels, the hint was easily taken. With expedition they went to work, and before the end of the term indicted above 1,000 reputable, opulent, gentlemen, merchants, and farmers, for high treason, in "adhering to the enemies of the State." That is to say, for living upon their own estates within the British lines during the war. One thing is worthy of notice, that all these indictments were against Loyalists only, although there lived during the rebellion some hundreds upon Staten Island, Long Island, and the Island of New York, who had, before the arrival of the royal army, been active partizans in favour of Congress, had served in the rebel Militia, on Committees, and in the provincial convention, who

upon the capture of these Islands, remained upon their estates, took pardons from the King's Commissioners, and renewed their oaths of allegiance to the Crown. Yet, not one of these were indicted. If their course was not "an adherence to the enemies of a State," I must confess I do not know what is "an adherence to the enemies of a State."

The number of indictments preferred against the Loyalists, however, was not thought sufficient. Something more was to be done. The General Assembly was called, a bill brought in, and with surprising rapidity passed by the three branches of the Legislature without the least opposition whatever. By this bill it was enacted, "that if any person, or persons, had, at "any time during the war, occupied any houses or farms, "storehouses, stables, barns, or mills within the British "lines, the property of persons without the lines, that "such occupiers should be answerable to the owners "for the rents of such houses, farms, storehouses, sta- "bles, barns, or mills, and if such houses, &c., should "have been occupied by different people during the "war, any, or either, of such occupiers as the owner "could lay his hands upon, should be answerable and "liable to the payment of the whole rent during the "whole war." In consequence of this, a person who had occupied a house, a farm, a storehouse, a stable, a barn, or a mill, for three months, three weeks, or even three days, was by this law subjected to the payment of rent for eight years (the continuance of the rebellion). And least this article should have any weight, or be construed in favour of the occupiers, it was further enacted, "That no plea put in by a defendant, "that he had possessed the house, &c., in consequence "of any order, power, or authority of British Generals,

" British officers, or of any of the public departments.  
" that such plea should not avail him. The courts  
" were ordered not to receive, but overrule such pleas,  
" and if the defendants did not file other pleas to give  
" judgment in favour of the plaintiffs by default." By  
virtue of this act numbers of persons were obliged,  
after the evacuation of New York, to pay large, and  
in many cases extortionate, rents for occupying houses,  
&c., the property of persons out of the lines. The  
occupiers saved the houses, &c., from ruin, waste, and  
destruction. These houses, &c., were delivered un-  
injured into the possession of the proprietors. The  
occupiers who preserved them from ruin, waste, and  
destruction were obliged, however, to pay high rents  
to the owners. Had the houses in New York belong-  
ing to rebels, who left the city upon the landing of the  
royal army upon Long Island, been left unoccupied and  
empty they would have been taken possession of by  
Hessians, runaway negroes, and other banditti common  
in such times, and either burnt, ruined, or totally de-  
stroyed. But rebels could not forgive Loyalists. They  
even punished them for the protection of their prop-  
erty. It was by the aforesaid act further declared, that,  
" It should be lawful for any person or persons who  
" had wood-lands fit for fuel or timber, situate within  
" the British lines, any part of which had been cut  
" down and appropriated to such uses, during the war,  
" to prosecute any person or persons who had been  
" employed in cutting down, carting, carrying away,  
" piling, cutting up, cording, assisting in putting on  
" board the wood boats, or loading it in carts or  
" wagons." Such persons were made liable to the re-  
spective owners for all the wood or timber cut upon,  
or carried from, their lands, and if a person could be

found who had cut only a stick, or given the least assistance in the cutting down or taking away such wood or timber, he was made answerable for the whole damage, though hundreds had cut besides himself, and he, perhaps, only the driver of a cart, or the piler of wood. Here again provision was made in favour of the plaintiffs, "that no plea of its having been done by order "of the British Generals, &c., should be available in a "court of law." This act was made, and the indictments aforesaid preferred, designedly to counteract the operation of the article now under consideration, because the Americans conceived it too much in favour of the Loyalists. They pretended a right to act as they pleased, and that all their acts were valid until the treaty was ratified by Congress. They must have known, that by the law of nations, preliminary articles are in all cases binding until definite ones are settled, or the negotiation entirely broken off. In the American peace there were no preliminaries. The articles were absolute. They required no ratification. They were *provisional only*, and the proviso depended upon a peace between Great Britain and France. The moment this happened, the articles ceased to be *provisional ones*. They became *absolute*. The provisional articles were signed on the 30th of November, 1782, and immediately transmitted to Congress. The preliminary articles between Great Britain and France were signed the 20th of January, 1783, and instantly sent to America, and the act in question was passed on the 17th March, 1783. *These are facts, and facts speak for themselves.*

Hundreds of his Majesty's loyal subjects, who thought themselves secure under this article, were prosecuted under the above mentioned act, in the most unrelenting

manner, hove into jail, refused bail, confined to their houses, or obliged to compound and pay extortionate damages, for the occupation of houses, &c., which would have been ruined had it not been for the occupier's care. Suits were brought against the wood cutters, wagoners, and team drivers (who received nothing more than daily pay). The damages laid in these actions amounted to more than a million of money.

Where was the honour of rebels and their love of "conciliation," and "reciprocity," when they passed this act which rendered the 6th Article of the peace nugatory, and lodged a power in their friends to recover all damages sustained by them within the British lines during the war, and gave no power to the unhappy Loyalists who had fled, or been banished from the rebel country, to recover rents from the occupiers of their houses, &c., or damages for the depredation committed upon their wood and timber lands? All the houses, farms, mills, barns, and storehouses of the latter were occupied by the refugees within the British lines during the whole war. All their wood and timber was cut down and sold for the benefit of the occupiers, yet these poor owners were excluded from the benefits of the act. The 6th provisional article actually stipulated and agreed to by the Commissioners in their favour, was by this act of the Legislature of New York rendered totally ineffectual. Such was what the American patriots called "Reciprocity."

By the 7th article it was agreed, "That there should "be a firm and lasting peace between Great Britain "and the American States. That all hostilities should "immediately cease, all prisoners upon each side set at "liberty. That his Britannic Majesty should, with all "convenient speed, and without causing any destruc-

"tion, or carrying away of any negroes or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the United States, "and from every place within the same, leaving in "all fortifications the artillery; and should also cause "all archives, deeds, records, and papers belonging "to any of the said States, or their citizens, which "might in the course of the war have fallen into the "hands of his officers, to be restored, and delivered "to the proper States and persons to whom they "belonged."

The several particulars of this article on the part of Great Britain were punctually complied with in the most honourable and unevasive manner, the clause relating to the negroes excepted. That matter shall be now explained. When the provisional articles were signed there were within the British lines at New York at least 2,000 negroes. These blackamoors had been induced by a proclamation of Clinton's to leave the rebel country and come to New York, upon a solemn promise, of provisions, of safety, and protection. The honour of the nation was pledged. The protection promised them could not be withdrawn. To deliver them up to their former masters, would have been an infamous, scandalous, breach of public faith. Sir Guy Carleton considered it in this light, and took his steps accordingly. What the Ministry thought when they entered into the provisional articles is another thing. But a set of men who could dismember the Empire, give up all the Western posts, the navigation of the lakes, the Mississippi, and as much land as would cover half Europe (and not included in any of the Colonies), with the honour and dignity of the nation, for the sake of a peace purposely designed to keep themselves in

power, thought the sacrifice of 2,000 negroes, though attended with a breach of national honour and the violation of public faith, a mere bagatelle, when put in competition with a peace they were humbly begging from American rebels. Sir Guy, however, thought differently of national honour and public faith. He possessed the honour of a soldier, the religion of a Christian, and the virtues of humanity. He loved his country, he loved his King, and was determined to see neither disgraced. He shuddered at the article that gave up the blacks, and at once resolved to apply a substitute. He was lucky in the thought. He proposed to Congress that an account should be taken of the number within the lines, their ages, sexes, situation, and the state of their healths, and a valuation made of each, and the liquidated sum paid to persons appointed by Congress to receive it for the use of the former owners of the negroes, in such proportions as the slaves should be respectively valued at, and as their former masters could prove their property in them. This proposal was much more beneficial to the claimants than to have a set of runaway negroes delivered up to them again. This would also preserve the public faith, and save the honour of the nation. It met with all the approbation that Sir Guy could expect, wish, or desire. Congress and the several Legislatures of the States jumped at the proposal. A valuation was made and approved of. The money, it is true, has never been paid. What occasioned it? *An absolute refusal on the part of the Americans to comply with a single article in the treaty in favour of the Loyalists.* When the Americans perform the treaty as stipulated by their own Commissioners, and as ratified by Congress, then will Great Britain pay the liquidated

sum. If she does so before, she will act the part of a bedlamite.

By the 9th article, "All places belonging to Great Britain, or the States, that should be conquered by either before the arrival of the articles of peace in America, were to be restored without difficulty or compensation." Nothing of this kind happened; the article was, therefore, a mere nullity.

## CHAPTER XIII.

SIR Guy now set himself seriously about the evacuation of New York and the British territories in its neighbourhood. By the treaty it was to be done "with all convenient speed." This left the time, in a great measure, discretionary in the Commander-in-Chief. He was the proper judge of the time convenient. He made no unnecessary delays. He was pressed by the British Ministry, by Congress, and by the Legislature of New York, to push on the evacuation with all haste. Sir Guy was a man of spirit, of honour, of resolution, and was determined not to leave the country till he could transport the loyalists (whom the new ministry had abandoned) to their respective places of destination, and procure transports sufficient to carry off all his stores, his troops, the baggage, and property, of the royal army. Considering the difficulties attending so large an embarkation, the great deficiency of transports for a long time, and the amazing number of loyalists to be conveyed from the British lines, it is really amazing in how short a time this intricate, complicated, and troublesome, piece of business was effected. The articles of peace arrived at New York in March, 1783. The provisional ones were not

ratified by Congress till the month of May following. Yet by the 25th of November, in the same year, did Sir Guy send from New York not less than 100,000 souls, who, finding the treaty violated in every instance by the Americans, who, seeing their friends and relations who returned home in consequence of the peace, tied up to trees, publicly scourged, insulted in every shape, many of them even ham-stringed, and all sent back to the British lines, (this was not only a manifest violation of the treaty, but at this very time there were not less than 2,000 rebels in New York, who had come into the city in consequence of the same peace, and were taking care of their property, and receiving back their houses), and recollecting, also, the cruelties inflicted upon the loyalists upon the evacuations of Savannah, and Charleston, determined to leave the places of their nativity, rather than put themselves in the power of persecuting, merciless, and unrelenting, enemies. Some were sent to Nova Scotia, some to Newfoundland, to Canada, to St. Johns on the Bay of Fundy, to the Bahamas, the Summer, and West India, Islands, with all their cattle, horses, hogs, sheep, poultry, grain, household furniture, and utensils of husbandry. In this time Sir Guy also sent to England all the stores belonging to the Crown, all the baggage and artillery of the British army, with the household effects of a numerous train of loyalists who accompanied the fleet, and about 40,000 souls, of which the army, their wives, servants, and children, at that time consisted. The final evacuation took place on the 25th of November, 1783, and forms a grand epoch in the annals of America.

Upon the evacuation of New York, the Americans were left in the full possession of their idol, their phan-

tom, independency. A mere ignis fatuus. This they found, in a short time, from woeful experience, to be really the case. Upon the evacuation of New York, also ended one of the most inglorious wars in which Great Britain had ever been engaged, prosecuted by a Ministry the most irresolute, undetermined, and pusillanimous, that ever Great Britain had, conducted by such Generals as Great Britain never before employed, and terminated by a peace the most infamous that Great Britain ever made. A peace made under the auspices of a Ministry composed out of a faction that had for more than twelve years opposed every measure of government, encouraged the Americans in their rebellion, spread the flames of discord through the nation, created a dissension in the navy, and protected Generals and Admirals, who had by their conduct disgraced England, lost America, and exhausted the treasury.

Some observations upon the effect of the evacuation of New York, and the consequences attending the same, will now be made.

It has been already mentioned that the new Ministry was formed in February, 1782; that Sir Henry Clinton was recalled, and Sir Guy Carleton appointed his successor, who arrived at New York, and took the command the April following. That in September of the same year, certain "provisional articles" were agreed upon, and signed at Paris, between the American Commissioners, and the British Commissioners, which were to be in full force and constitute a peace between the American States and Great Britain, as soon as a peace should be concluded between the latter and France. Prior to these articles Great Britain solemnly recognized the independence

of the revolted Colonies, and treated with them as Independent States. In February, 1783, a peace took place between Great Britain and France, and upon this event the provisional articles became absolute, and the peace between Great Britain and America complete. By these articles his Majesty was obliged by the new Ministry to abandon his loyal American subjects, contrary to his wishes, his desire, and inclination, in direct violation of his royal word pledged to them, sacredly pledged by royal proclamations, and promised to them by several acts of the Legislature, without a term, a condition, or an effectual stipulation, in their favour. This peace was the bantling of Lord Rockingham, the Duke of Richmond, Lord Shelburne, Charles Fox, and Edmund Burke.

It has been also mentioned that by the provisional articles Great Britain was bound to withdraw her fleets and armies from America, "with all convenient speed." The principal force lay at New York. There was indeed a garrison at Penobscot, in the Eastern part of New England. This was of little consequence and could be removed with ease. The evacuation of New York took time. The news of the peace arrived at New York in March, 1783, the final evacuation was completed on the 25th of November following, a space of nearly eight months. All the circumstances and difficulties considered, it is really surprising it was accomplished so soon. In all this business great honour is due to Sir Guy Carleton. By no threats of the rebel powers was he ever terrified. He acted with spirit, with resolution, firmness, and decision. His method of doing business was regular, access to him was easy, he heard all complaints, and was determined not to sacrifice the loyalists, nor leave the country,

till every one of them who chose to go should be sent off. The rebels complained of the delay. It answered no purpose. The Article was indefinite. The words were "with all convenient speed." This Sir Guy promised them should be most punctually complied with. But he was the sole judge of "the time convenient." The Ministry pressed the evacuation. Sir Guy gave the same reasons, "I have not shipping sufficient, nor shall the loyalists be abandoned." In this Sir Guy deserves great honour, and in this he met with the applause, and approbation, of all good, honest, and virtuous men. It met, however, with the curses of the Ministry, of the faction in England, and of the rebels in America. Unfortunately however, for Sir Guy, in his now critical situation, he was unacquainted with the laws of England, and what was much worse, surrounded by strangers, some of them artful, designing, and cunning, and perhaps either rebels at heart, or well affected to the cause. Others again had purposes of their own, or the interest of friends to serve, as it was more than eight months from the news of the peace in America until the final evacuation of America. The loyalists in general, in the mean time, left the British lines with their families and personal property. This most of them did with little difficulty, considering the goodness, the humanity, assistance, and attention, given and shown them by Sir Guy. They were enabled by the Articles to recover their debts, and by attorney could sell their real estates. In this they were to meet with no interruption, or, at least so said the Articles. But there were, within the British lines at New York, a number of gentlemen of the first rank, character, opulence, connections, and fortunes, in the province, who were in a very different

situation. These gentlemen had by a law of the rebel Legislature of New York, passed in October, 1779, been attainted of high treason, their estates, both real and personal, confiscated, themselves proscribed, and if ever afterwards found within the State to suffer, as the act expresses it, "the pains of death without the benefit of Clergy." These gentlemen were under an actual necessity of leaving the province whenever the evacuation took place, or staying behind and being hanged. It is natural to suppose that the former would be the choice. The large real estates of which most of them were seized, could not be removed, nor sold. They were confiscated, and to be disposed of by the rebels, as soon as the evacuation should take place, for the benefit of the State. No provision had been made for these unhappy gentlemen by the English Ministry. Their estates were sacrificed, and their families totally ruined, to gain a peace for Great Britain and humour the American rebels. Many of these attainted persons had large personal estates within the British lines, due upon bonds, mortgages, and simple contracts. The debtors were rich, opulent tradesmen, mechanics, farmers, and merchants. No civil law existed. Not a Court of Justice was open. Some partial, unprincipled, ineffectual courts, called Courts of Police, indeed there were. But by the formation of these Courts they had no cognizance of debts contracted prior to the 1st of May, 1777. The Judges of these Courts were not sworn to do justice. They were left to their own consciences, and God knows they were not very tightly bound. They all had made fortunes, and yet exercised neither law, justice, nor equity. The rebellion was a trading one, and the officers of the Courts of Police made the most of it. An application

to these Courts the attainted gentlemen knew would answer no purpose. Memorials to Sir Guy was the only expedient that could be thought of. He was Commander-in-Chief. Every creature within the British lines was under his jurisdiction, within his power, and under his command; his authority was absolute. To whom then, were the attainted gentlemen to apply for redress, in order to compel their debtors to pay their just demands before the evacuation took place, than to the Commander-in-Chief? He was in possession of a power absolute and uncontrollable. To him they did apply; they set forth the unhappy situations to which they were reduced in consequence of the peace, the rebel act of attainder, the want of the civil law and the usual courts of Justice; that New York was to be evacuated with all convenient speed; that when it happened the memorialists would be totally and absolutely remediless, deprived of their legal debts, and disabled from bringing actions for their recovery, and prayed that the General, as Commander-in-Chief, would consider their unfortunate cases, exert his power, and compel the debtors to pay their creditors before the evacuation took place. Above eight months elapsed between the arrival of the news of peace at New York, and the complete relinquishment of the country. Had Sir Guy exerted himself, availed himself of his amazing power and authority, he might within such a time have compelled every debtor within the lines to have satisfied his honest creditor. Prisonships, and prevosts, would not have been much relished by merchants, farmers, traders, and mechanics. Of such, did the debtors in general consist. Why Sir Guy Carleton refused to make use of his power in favour of these unhappy loyalists is uncertain. It could

not be for want of knowing his own authority and power, under his commission, and instructions, as Commander-in-Chief in America. He hardly wanted at that period to conciliate the affections of the rebels. Honour, virtue, justice, and honesty, were ever the ruling principles of his conduct. Whether he was unwilling to interfere in civil matters personally; whether he was governed by the advice of some of his daily attendants, of little honour, little knowledge, and less law; or whether he was guided by an artful, cunning, designing, hypocritical, Presbyterian rebel, who under pretence of unbounded loyalty, had wormed himself into his good graces through the interest and influence of his favourite, Mr. Commissary Watson, his Excellency upon this occasion took a most extraordinary step. Instead of sending a proper officer to the debtors, insisting upon payment, the provost, or prisonship, he issued a commission authorizing certain persons therein named, to examine into all demands of the loyalists, liquidate all debts, hear all the parties, examine witnesses, and ascertain the exact sum due to each claimant. But he gave no power to compel the payment of a single debt. The commission was therefore idle, trifling, and ineffectual. It answered no one purpose, except putting a guinea a day in the pocket of each Commissioner, and rations of every kind for himself and family. The Commissioners sat for near seven months, did little good, ate the King's provisions, burnt his wood, drank his liquor, and pocketed his money. Let us now consider the nature of this commission. It contained not a power that was not then vested in the Courts of Justice. It conferred the Commissioners in their jurisdiction to all debts contracted after the 1st of November, 1775, and such debts as

these were recoverable in the Courts of Police. It was the payment of debts due prior to that day, that the memorialists begged the General to compel. To do this the commission gave no power. The money was, of course, lost. The Commissioners got a great deal. The loyalists lost all their debts, though due to them from substantial people. They were obliged to leave America upon the evacuation of New York. Some went to, and settled upon, lands uncultivated in the wilds of Nova Scotia. Others went to England, where they were by the Ministry left to starve with their wives and children upon pittances of from £50 to £200 a year. Had their just debts been paid, and Sir Guy could have compelled their payment, they might, when in England at least, have lived comfortably. These gentlemen, prior to the rebellion, dwelt in elegant houses, had servants in abundance, large, improved, and cultivated, estates, and lived in affluence and splendour. The annual incomes of many of them amounted from £500 to £5,000. They lived like German princes. The productions of their estates afforded them almost every kind of luxury. They were loyal, their estates were large, for this they suffered. They ventured everything on the part of their sovereign and the Constitution of Britain. They were, however, abandoned. If there is a blot on Sir Guy's character it is in this affair. I even excuse him here. Every man may be imposed upon. Sir Guy had admitted into his confidence an artful, cunning, hypocritical, man, of true rebellious principles, whose every relation was in the service of Congress. I pity Sir Guy, I despise his adviser, and I execrate the man who introduced the rogue that so gained his confidence, and put him upon plans injurious to the loyalists. Sir Guy

loved the loyalists, his intention was never to injure a single one; his confidence was misplaced, he was deceived, he was imposed upon. Sir Guy was a soldier, "honest, bold, and brave;" his composition was honour, justice, and virtue. He had no disguise, suspected none, and thought everybody as honest as himself. Such a person is easily imposed upon by a confidant, for as Shakespeare says, "Man may smile, can smile, yet be a villain." Such a character, unfortunately for the loyalists, was in the General's train, and what was worse, in his confidence.

## CHAPTER XIV.

I SHALL now proceed fully to consider the New York Act of Attainder, passed by the rebel Legislature of that Colony, on the 22d day of October, 1779. By this Act, the persons mentioned therein,<sup>1</sup> were attainted, their estates, real and personal, confiscated, and themselves proscribed, the second section declaring,

<sup>1</sup> Lord Dunmore and General Tryon, both formerly Governors of New York, John Watts, Oliver De Lancey, Hugh Wallace, Henry White, John Harris Cruger, William Axtell, and Roger Morris, Esqs., late Members of the Council for the Colony of New York; George Duncan Ludlow and Thomas Jones, Judges of the Supreme Court of said Colony; John Tabor Kempe, Esq., late Attorney-General; William Bayard, Robert Bayard, and James De Lancey, Esqs.; David Matthews, late Mayor of the city of New York; James Jauncey, George Folliot, Thomas White, William McAdam, Isaac Low, Miles Sherbrook, Alexander Wallace, and John Wetherhead, of the city of New York, merchants; Charles Inglis, of the said city, clerk, and Margaret his wife; Sir John Johnson, Guy Johnson, Daniel Claus, and John Butler, Esqs., of the county of Tryon; John Yost Herkimer, of the same county, yeoman; Frederick Phillipse, James De Lancey, and Frederick Phillipse, Jr., of the county of Westchester, Esqs.; Daniel Kissam, David Colden, and Gabriel Ludlow, Esq., of Queens County; Philip Skene and Andrew P. Skene, Esqs., of Charlotte County; Benjamin Seaman and Christopher Billopp, Esqs., of Richmond; Beverly Robinson, Beverly Robinson, Jr., Malcolm Morrison, Esqs., of the county of Dutchess; John Kane, of the same, Gent.; Abraham C. Cuyler, Robert Leake, Edward Jessup, and Ebenezer Jessup, of the county of Albany, Esqs.; Peter Du Bois and Thomas H. Barclay, Esqs., of the county of Ulster; Susannah Robinson, wife to the aforesaid Beverly Robinson; Mary Morris, wife to the aforesaid Roger Morris; John Rapelje, of Kings County, Esq.; George Muirson, Richard Floyd, and Parker Wickham, Esqs., of Suffolk County; Henry Lloyd the elder, of Boston, merchant; and Sir Henry Clinton, Knight of the Bath.

that "each and every of them who shall at any time "hereafter be found in any part of this State, shall be, "and are hereby adjudged and declared guilty of "felony, and shall suffer Death as in cases of felony, "without Benefit of Clergy." The crime charged, is, "an adherence to the enemies of the State." The cases of many of these attainted gentlemen were extremely hard, cruel, and oppressive, and show to what lengths, to what unjustifiable lengths, rebels can go; and what illegal, arbitrary, and cruel, steps they can take in order to wreak their vengeance on such as they called their "enemies." For instance, John Watts, Esq., one of his Majesty's Council, and James De Lancey, Esq., a representative in General Assembly, left America in May, 1775, more than a year before the rebel declaration of Independence, and remained in England under the jurisdiction and protection of their Sovereign. This was called "an adherence to the enemies of the State," and they were included in the Act. Yet, Henry Cruger, Esq., a zealous Loyalist, who left New York at the same time, and settled in the same country, under the same protection, is omitted. This at least shows partiality. Sir Henry Clinton and General Tryon were included in the Act. These gentlemen were the subjects and natives of Britain, from their youth officers in his Majesty's service. In the name of common sense, what right had the Legislature of New York to attaint them? They could by no means, nor with any kind of propriety, be deemed subjects of that State. It is true they bore arms, but it was in the cause of their Sovereign, whose subjects they were, and whose commissions they bore. With as much propriety they might have attainted every officer in the British army

that served in America. Lord Dunmore was also included. Mr. De Lancey, and Mr. Watts, had large real estates in the Province of New York, and to lay violent hands upon their property, were such arbitrary, illegal, and unjust steps taken. General Robertson, General Vaughn, and Major Edmondson, who had large estates in the Colony, were taken no notice of, an evident act of partiality. These, too, had all been in arms in America against rebellion, equally with Clinton, Tryon, and Dunmore. The Rev. Mr. Inglis, the rector of Trinity Church in New York, Colonel Robinson, and Colonel Morris, (the latter an Englishman by birth), were also attainted. These gentlemen held large, and valuable real estates in right of their wives ; the vindictive Legislature of New York, in order to get possession of these estates, took a step that no civilized nation ever before took, they attainted the women, though feme-covert, for "adhering to the enemies of the State," that is to say, in eating, drinking, living, and sleeping, with their husbands, an injunction commanded by the decrees of the Almighty. This even was construed an act of treason, and their children, many of them mere infants, were by the cruelty of this Act debarred from inheriting the estates of their mothers. To such lengths, can, and did, rebels go.

Hugh Wallace, Frederick Phillipse, Thomas Jones, James Jauncey, and John Rapelje, Esqs., with Miles Sherbrook, and Alexander Wallace, merchants, were apprehended in August, 1776, by the orders of General Washington, transported to Connecticut, and intrusted to the care of Governor Trumbull. In the month of December following, he gave them permission to return to their several places of abode, upon Long Island, and York Island, (then in the actual pos-

session of Great Britain) upon paroles, not to take up arms, nor convey any intelligence prejudicial to the States, and to return when called for. The two first were punctually and faithfully complied with. The latter was never demanded. Yet, this living within the British lines, upon their own estates (with the permission of Governor Trumbull, under whose charge they were put by General Washington, whose prisoners they were), was construed by the New York Legislature into an act of "treason," "an adherence to the enemies of the State," and for this their persons were attainted, their estates confiscated, and themselves proscribed. These gentlemen ever looked upon themselves as the subjects of the King of England, to whom they had sworn allegiance. They never conceived themselves as subjects of the American States, to which they had neither sworn allegiance, nor entered into any covenant, nor association, to support the rebel cause against that of their rightful Sovereign. These, however, were called subjects of the State, and included in an Act calculated to deprive them of their lives and property, and this, without any previous notice to appear, defend themselves, and oppose the passing of the Act, which in cases of this kind, in civilized nations, is always done. After the suppression of the two Scotch rebellions, in 1715, and 1745, numbers of noblemen who had borne arms in favour of the Pretender, either fled into foreign parts, or concealed themselves within the realm. Notices were published in all the public papers in England, Scotland, and Ireland, and in all the States in Europe, specifying the names of the delinquents, and ordering them, at a long day, to appear, submit to Government, and take their trials, or show cause why they should

not be included in Acts of Attainder, intended to be passed for the confiscation of their estates, and the attainting of their persons. But with respect to those suspected persons who had, upon the commencement of those rebellions, been taken up by Government, actually confined, obliged to give security for their good behaviour during the war, or enter into paroles, not to take up arms, nor in any method whatever assist the rebels, they were all discharged when the rebellions were crushed. Those who did not appear (and had been in arms) at the given time, were included in the Acts of Attainder, and their estates confiscated. But in all these Acts there were provisoës saving the estates of feme-covert and the jointures of ladies.

Ray, in his history of the rebellion in 1745, says, " His Majesty's reign had hitherto been unspotted with blood, but now the mildness of Government gave place to justice. It was requisite for the security of the Constitution, for restoring the vigor of the laws, and in continuing the future tranquillity of the kingdom, to make examples of such as had disturbed it. The voice of the nation demanded it, and the Legislature provided that it should be speedily and effectually done. They passed an Act for the purpose agreeably to the usage of former times. His Majesty issued a commission of Oyer and Terminer. The Judges sat at St. Margaret's Hill, in Southward, though the overt acts were committed in Scotland. This was according to custom, agreeably to the Act, and of course Constitutional. As numbers who had been in this rebellion had fled, a bill of Attainder was brought into the House of Commons, and witnesses examined to prove the guilt of the persons therein named. After it had passed the Commons, the like

"examination took place in the House of Lords. It then passed, and received the royal assent upon this express condition, if they did not surrender themselves by a certain day therein mentioned, and submit to justice by coming to a legal trial.

"Lady Seasford and Mrs. MacIntosh, at the head of their clans, joined the Pretender at Inverness. The latter was a great beauty, young, amiable, and sensible. She collected the whole clan, marched at their head, with a white cockade in her hat, and presented them to the Pretender. Lady Kilmarnock also joined the rebels, and by her persuasions, being an artful, cunning, agreeable woman, prevailed upon her husband, the Earl, to join the standard of treason. He was taken at Culloden, tried in England, and lost his head upon Tower Hill." These ladies were never attainted, the real estates which they held in their own rights were not confiscated, nor were their jointures taken from them.

The Governor of Pennsylvania issued a proclamation on the 2d day of October, 1780, ordering Benedict Arnold Esq., and nine others who were then with the British Army at New York, and formerly inhabitants of that State, to come in, surrender, and take their trials, on or before the 30th of November then next, or in default of such appearance, and submission, they would be included in an act of attainder, and their estates confiscated. New York is but ninety miles from Philadelphia, and two months were allowed them to come in, surrender, and take their trials. There were three acts of attainder in this State passed at three different times against different people. The same steps were taken in each as in that above mentioned. Massachusetts, Rhode Isl-

and, Connecticut, New Hampshire, and New Jersey did the same.

Smollet, Hume, and Goldsmith, in their respective histories of England, all agree in this fact, "that "Lord Bolingbroke, upon the accession of George "the First to the throne of Great Britain, had the "Seals taken from him, and all his papers secured, "upon which he privately left the kingdom and went "to France. He was impeached by the Commons "of high treason, and the articles of impeachment "sent up to the Lords, and proclamations issued, dis- "persed through the kingdom, sent to, and published, "in all the papers in France, requiring him to surren- "der, and take his trial, which, not doing, he was, by "an act of Parliament, attainted of treason, and his "estate confiscated about six months after the proc- "lamations first issued." In how different a manner did the Legislature of New York act. Without the least notice, either written, or verbal, without a summons, a monition, or an advertisement, published in their papers to call in the objects of their resentment, to take their trials, they passed an act of attainder and confiscation, *ex parte*, in which feme-covert seized of lands in their own rights were included, and not a provision, nor a saving clause, in favour of women entitled to jointures issuing out of their husband's estates. But what is as extraordinary, (more it cannot be,) they attainted, banished the persons, and confiscated the estates, of several gentlemen who were taken up at the commencement of the rebellion, or at least as soon as Independency was declared, made prisoners, and bound by strict paroles, during the whole war, upon such terms as totally and actually disabled them from taking up arms, or rendering any other essential ser-

vices to their Sovereign. In this situation were Colonel Frederick Phillipse, Hugh Wallace, Thomas Jones, James Jauncey, and John Rapelje, Esqs., with Alexander Wallace and Miles Sherbrook, merchants.

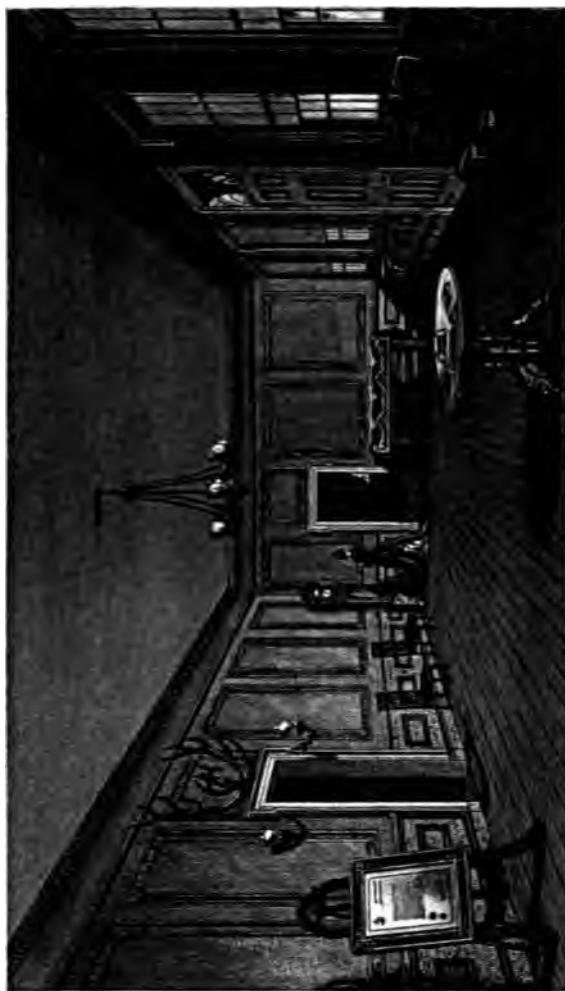
The case of Thomas Jones is a very singular and remarkable instance of the conduct of this Legislature. He was taken up as a suspected person, before the Declaration of Independence, by an order from the provincial convention, and enlarged upon his parole. Notwithstanding which, in about six weeks thereafter, he was seized upon by the military under an order from General Washington. Not the least pretence was made as to a breach of his parole, but prudence, necessity, and the customs of nations, were urged as an excuse. Mr. Jones lived upon Long Island, was a man of property, had great influence, and General Howe was expected to land upon the Island every day, under which pretence this flagrant breach of a solemn and sacred parole given by the civil power was justified by the rebel chief. Mr. Jones, with a number of others, were, by an order from Washington, sent, under a guard of rebels, into Connecticut, and consigned over to the orders, and direction, of the Governor of that State, who gave them paroles, and confined them to certain limits, which they were not to exceed, nor to correspond with General Tryon, nor the King's troops, upon pain of being locked up in a jail. After continuing in New England about five months, the Governor gave Mr. Jones permission to return home, and live anywhere within the British lines, upon a parole, not to take up arms, convey no intelligence prejudicial to the States, and to return when demanded. At this time Congress had abandoned Long Island, and the Island of New York, and left the inhabitants



*Starting from the beginning, there comes the history*

*of the world, the life of the people, the history*

*of the world.*



at the mercy of the British Army, Congress being unable to give them any kind of protection. Mr. Jones, upon his return, resided upon his estate upon Long Island, and in every shape punctually complied with every particular contained in his parole. The Act of Attainder under consideration, was passed on the 22d of October, 1779. The Colonies of New York and Connecticut adjoin each other. The passing of this act was instantly known to the inhabitants of the latter, though it was not known within the British lines in New York for several months afterwards. The first intelligence of it upon Long Island, and at New York, was a copy of the act sent by a rebel officer from Boston to his father upon Long Island, who was included in the act. So secret was this business kept from the British, and the gentlemen so immediately affected by it. It has been observed that the act passed on the 22d October, 1779, and that it was well known in Connecticut at the time, yet, on the 6th of November following, the crews of three whale-boats, commissioned as privateers by the Governor of Connecticut to cruise against the enemies of the United States, the subjects of Great Britain, and to seize their property, either upon the seas, or upon any lands or territories under the jurisdiction of Great Britain, broke into Mr. Jones' house, (while he was peaceably living at home, as he thought, in perfect security, in consequence of his parole aforesaid,) and plundered it of property to the amount of several hundreds of pounds. They even robbed Mrs. Jones of her wearing apparel, and took that of two young ladies in the house, (the clothes upon their backs only excepted) and after plundering the house, insulting the family, and regaling themselves with good old Madeira,

they ordered Mr. Jones to proceed with them. He pleaded his parole. It had no effect. The answer was, "the Governor wanted him, and go he must, but he might depend upon being soon exchanged." They compelled him to march in two nights, through woods, swamps, and morasses, and over hedges, ditches, and fences, sixty miles on foot, and sleep two days in the woods, without fire, victuals, or drink, (a little mouldy cheese and a hard biscuit, with a little water, given him by the party, excepted). They then crossed the Sound, and upon his arrival in Connecticut, he was admitted to a parole, in which he is called, "a British prisoner of war." He received several other paroles upon different occasions, while a prisoner in that State. In every one of which he is called a "British prisoner of war." After a captivity of six months he was exchanged for a General Silliman, and Governor Trumbull, in a pass under the Great Seal of the State, giving him permission to return to New York, and directing all officers upon the American lines to give him every assistance in their power, and by no means to molest him, calls him, "*a British prisoner of war, and that he is exchanged for General Silliman, a subject of the United States, and then a prisoner of war in New York.*"

The property of which Mr. Jones was plundered by the rebel privateers, was libelled in the Maritime Court of the County of Fairfield, in Connecticut, as the property of a British subject, taken while a war was actually existing between Great Britain and the United States of America ; to try which, by the Laws of that State, is by a jury upon oath, who are, upon such oath, to determine whether the property libelled, be the property of a British subject, or not; if found to

be British the judge condemns it; if not he acquits it. Accordingly, twelve substantial, reputable, freeholders were summoned, and sworn, to inquire whether Mr. Jones's property then libelled, was the property of a British subject, or not? The evidence was, that Mr. Jones lived upon Long Island; that Long Island was conquered by Great Britain, and was then in her possession, and the inhabitants her subjects; and that the property libelled was taken out of the house of the said Thomas Jones, situate upon the aforesaid Island. Upon this evidence the jury determined that the effects libelled were the property of the said Thomas Jones, and that the said Thomas Jones lived under the jurisdiction, and was a subject of, the King of Great Britain. Upon this verdict the goods were condemned, sold, disposed of, and the proceeds divided among the owners and crews of the privateers.

With what art, cunning, deceit, and villainy did the States act when it suited their purposes so to do! The State of New York, on the 22d of October, 1779, declared Mr. Jones *a subject of the United States*, though he had never taken an oath of allegiance or fidelity to them, signed any association, nor entered into any agreement to assist them in their opposition to Great Britain, or in support of their independence, and as such, included him in their Act of Attainder, and confiscated his estate, (though at the very time a prisoner upon parole, and an officer and living under the jurisdiction, and within the territories, of the King of Great Britain) as "an adherer to the enemies of the State." That is to say, living upon Long Island, upon his own estate, with the permission of Governor Trumbull, of Connecticut, whose prisoner he then was. And the State of Connecticut, about the 13th of November, in

the same year, declared him to be *a subject of Great Britain*, and as such, libelled, and condemned, and sold his property taken by privateers, as the property of a British subject. It seems rather inconsistent, and unintelligible, to a person of moderate understanding, that Mr. Jones, under the circumstances above mentioned, should, in the State of New York, be considered as a subject of the United States, and in the State of Connecticut as a subject of Great Britain. Yet so it was. And by this piece of chicanery did the State of New York confiscate his real property, and vest it in the people of that State as being a subject of theirs, while their sister State, by declaring him a subject of Great Britain, condemned his personal property as such, and sold it for the benefit of the owners and crews of rebel privateers fitted out from, and owned in, Connecticut.

"Bills of attainder," says an excellent writer upon personal laws, "are exertions of those extraordinary legislative powers which ought only to be used on the pressure of real and urgent necessity; but never to be desecrated to the gratification of political resentments." He further says, "no attainder should ever take place without a citation to appear;" if done otherwise, the author adds, "the measure is cruel, iniquitous, unjust, and arbitrary."

The New York Act of Attainder was undoubtedly founded upon the gratification of private revenge and political resentment. No citations were ever served upon the persons devoted to destruction by that act. Not even the formality of a common advertisement in the public papers was thought necessary by that vindictive Legislature which enacted it. No proclamation was issued requiring the delinquents to surrender, and show cause why their names should not be inserted in

the bill. Several of the gentlemen attainted were in England at the time, had been there long before the declaration of independence, and were there living when the act passed. They had taken no part against the United States of America, but they were guilty of a worse crime, *they had large real estates in the Colony of New York.* Power overcomes not only right, especially when in the hands of bad and ignorant men, such as the majority of the New York Assembly at that time in a great measure consisted, but even justice, law, reason, virtue, equity, and the holy religion of Jesus Christ itself.

The persons attainted were all Episcopalians. The attaintors, or, at least, the greatest part of them, Presbyterians. Upon the passing of this act, a friend of James De Lancey, Esq., (who was then in England) inquired of one of the members why his name was put in the act, who candidly answered, "it was because he "voted in General Assembly against taking any notice "of, or approving the proceedings, of the first Congress." This vote was in February, 1775, *about 17 months before the declaration of independence, and, of course, 17 months before the rebel States claimed the powers of an independent nation.* What right had they, after they became a nation, to attaint persons for acts committed at a period when *they acknowledged themselves the loyal subjects of the King of Great Britain,* will puzzle the greatest sage of the law to discover. Upon the same principle, Frederick Phillipse, Benjamin Seaman, Christopher Billopp, Daniel Kissam, James Jauncey, and John Rapalje, Esqs., were included in the act. They voted as Mr. De Lancey had done, while Jacob Walton, William Nicoll, Isaac Wilkins, and Leonard Van Kleeck, who voted the same way, were

omitted from the Act. Why such evident partiality? The truth, in short, was, "the gratification of private revenge and political resentments," or why were six only of these gentlemen who voted against noticing the proceedings of Congress included in the act, and the other five omitted?

Another striking instance of revenge, malice, and private, and political, resentment in that Legislature which passed the Act of Attainder shall be now produced. In November, 1775, about nine months prior to the declaration of independency by the revolted Colonies, while they were all confessing themselves the loyal and faithful subjects of the King of Great Britain, and upon all occasions acknowledging him as their liege Lord and Sovereign, John Thomas, Esq., then first Judge of the Inferior Court of Common Pleas for the county of Westchester, at the request of the county, applied to General Tryon, then Governor of New York, for a special commission of Oyer and Terminer and general jail delivery, for the trial of a capital offender then confined in the jail of that county. A commission was accordingly issued, under the great seal of the province, and Thomas Jones, Esq., then one of the Judges of the Supreme Court, attended with the commission. When he arrived at the White Plains, the county town, he found a number of armed persons in detached parties riding about the county, to the terror and alarm of the peaceable inhabitants, under (as it was said) the orders of the County Committee, and robbing what were called "Tories," that is, "loyal subjects," of their arms and ammunition. The judge, in his charge to the Grand Jury, strongly recommended that these people should be indicted as trespassers and rioters at least. At the close of the court, he also or-

dered four persons confined in jail, by an order from the Committee, for what they called Toryism, that is loyalty, to be discharged. This official action was the reason given afterwards by a leading member of the House, to a friend of the Judge, why he was included in the Act of Attainder, although this happened nearly nine months prior to the declaration of independence, and at a time when the Colonies allowed themselves to be the subjects of Britain, and the Judge was acting under a commission from the Crown, and bound by his solemn oath of office to see the laws of the land enforced, of which all mobs, riots, and trespasses, are manifest breaches.

What but private resentment, or some political motive, induced them to insert the name of John Watts, Esq. He was in England many months prior to the declaration of independence, many months prior to the arrival of the British army in the province of New York, never returned during the war, never was in arms, nor assisted the royal army in America in any shape whatever. Private revenge in somebody, no doubt, was the occasion. But the reason given was, "he had a son in the British army." A better might have been given, "he had a large estate." What had Lord Dunmore done that occasioned his attainder? Had the State of New York a right to attaint for pretended treasons committed in Virginia? I fancy not, legally. But his Lordship had large tracts of land in the Colony of New York, the best reason in the world with the members of that Legislature which passed the New York Act of Attainder. Was Lord Dunmore a subject of the United States? I aver that he was not. He was a subject of the King of Great Britain, and amenable to no other State whatever.

Why were Sir Henry Clinton and General Tryon included in the act? For the same reason that Lord Dunmore was, they had large tracts of land in the province. They were not subjects of the United States. They were the subjects of Great Britain. The act says, they adhered to the enemies of the State, that is, they bore arms and had commissions in the British army. Was this a sufficient reason for their attainder? It was not. If it was, why were not all the field officers in the British army serving in America attainted as well as those gentlemen? They were all equally guilty. The crime was the same, fighting the battles of their Sovereign, in attempting to quash an unhappy rebellion. No! Private revenge, the gratification of political resentments, were the foundation upon which the Legislature proceeded, and the motives by which they were actuated, when they included Sir Henry Clinton and General Tryon in the act. If not, why was not General Robertson included? He had a large estate in the province, and a principal command in the army during the whole war. Why this partiality, if private revenge and political resentments were not the governing principle of the New York Legislature when they passed this vengeful act?

## CHAPTER XV.

THE cases of other gentlemen named in the Act of Attainder, who were in a different position, will now be examined. George Folliot, Hugh Wallace, Alexander Wallace, Miles Sherbrook, Thomas White, John Weatherhead, John Tabor Kempe, the Rev. Charles Inglis, Guy Johnson, Daniel Claus, Philip Skene, Andrew Skene, Malcolm Morrison, John Kane, Robert Leake, Edward Jessup, William Axtell, Roger Morris, and James Jauncey, are all included in this Act, and their estates confiscated. Pray what had the State of New York to do with these gentlemen? They were not the subjects of the United States, they were the subjects of Great Britain, *born* in Great Britain, Ireland, or the West India Islands. If the Declaration of Independence created legally a separation between the United States and Great Britain, and the States in consequence thereof became a separate nation, the subjects of that nation could consist only of the native inhabitants, and not of Europeans who happened to be in America when the Declaration of Independence was published. These gentlemen, besides, come immediately under the distinction made in the provisional articles of peace, to wit, "His Majesty's *real* British subjects," and as such, ought (had the least virtue,

honour, or honesty existed in the Legislature), to have been restored to their estates, and had their proscriptions taken off, by a repeal of the Act as far as it related to them. For if the provisional articles, which became the treaty of peace, in their effect and operation rendered null and void an act of Parliament, which they effectually did, (the act establishing the boundaries of Canada) in settling and ascertaining the line between the United States and the British dominions in America, they equally rendered null and void the Act of Attainder of the New York Legislature, with respect to the above gentlemen. The treaty having made a manifest, plain, distinction between "his Majesty's real British subjects" and the natives of America, under the description "of *real* British subjects" these gentlemen all fall. Besides, these gentlemen never could come under the denomination of "adherers to the enemies of the State." To whom did they adhere? To the King of Great Britain, their lawful and liege sovereign, and to whom they had sworn allegiance. They were born within his European dominions, were "*real* British subjects," and owed no faith or allegiance to the United States, though in America when Independence was declared, (a temporary one, until they could dispose of their property, and leave the country, excepted).

It was given out by the Americans that the Rev. Mr. Inglis was attainted because he prayed for the king. True, he did. But where? In a king's city. And pray what business was it to the Americans what was done in a city belonging to the King of Great Britain? They might as well have attainted all the clergymen in Canada. This was not the reason. The sole object was his estate, or why was his wife also attainted?

The answer is obvious. Mr. Inglis held all his real estate in right of his wife. Why was he attainted, the only clergyman out of nearly fifty who lived within the British lines at New York during the war and constantly performed divine service and prayed for the king and royal family? His estate was the aim.

Another striking instance that the Legislature, in passing the Act, was solely stimulated by pique, revenge, malice, or political resentment, is that Richard Floyd, Esq., of Suffolk County, is included in the Act, and the reason given was, that he had accepted a commission from Governor Tryon as Colonel of the militia of that County after the Declaration of Independence. Yet his brother, Benjamin Floyd, who at the same time received a commission as Lieutenant-Colonel of the militia of the same County, was *not* included in the Act. And what is very remarkable, in the cases of Parker Wickham, and Frederick Hudson, Esqs., who were at the same time commissioned as Majors of the same militia, by the same Governor, the former was attainted, the latter went unnoticed.<sup>1</sup> In

<sup>1</sup> Andrew Elliott, Esq., who was Superintendent of the Police at New York, and of all Exports and Imports out of, and into, the port of New York, and acted in both offices under an appointment from General Howe, from the 1st of May, 1777, until the total evacuation of New York, in November, 1783, was *not included* in the Act of Attainder of the 22d of October, 1779, nor was he ever indicted in consequence of that Act. His estate in the province was, of course, secure, safe, and at his disposal. Yet, David Matthews, the second Magistrate in the Court of Police, and Peter DuBois, the Assistant Magistrate, were included in the Act, attainted, and their estates confiscated. How is this to be accounted for? Why, Elliot was a Presbyterian, and had friends in the rebel Assembly. But Matthews was an Episcopalian, and DuBois a member of the Old Dutch Church, and both steady, firm, loyalists. Does not this show that the rebel Legislature acted in the most partial manner? Lambert Moore, Esq., was the second officer in the office of Exports and Imports, and yet was not included in the Act, or even indicted in consequence thereof, though a strict and rigid loyalist. But then his father-in-law and two of his brothers-in-law were strict, flaming, rebels, and this accounts for the indulgence shown to him.

Queens County the militia was embodied immediately after the battle of Brookland, and all the officers received commissions from Governor Tryon. They did duty upon all occasions; guarded the coasts, attacked the rebel whale-boats, took a number of prisoners, and frequently attended the king's troops in their expeditions to the east end of the Island. Archibald Hamilton, Esq., a Scotch gentleman who lived in the County, commanded this corps. Yet neither he, nor any one of his officers, were included in the Act. Does not this show the utmost partiality, and is it not a convincing proof that "private revenge and political resentments" were the principal motives which actuated the Legislature in passing the Act in question?

Let us now consider the Act in a different point of view as to several of the gentlemen included therein. George Duncan Ludlow, Thomas Jones, Frederick Phillipse, William Bayard, Isaac Low, David Colden, Daniel Kissam, Benjamin Seaman, Christopher Billopp, John Rapalje, George Muirson, Richard Floyd, and Parker Wickham, are all included in the Act. The crime, "adhering to the enemies of the State." What was this adherence? Nothing more than living upon their own estates, in their own houses with their wives and families, within the British lines. During the war the French took St. Vincents, Dominica, Granada, St. Kitts, and Tobago. These islands surrendered without any articles of capitulation. The conquerors suffered the English inhabitants to continue in the possession of their estates, upon their swearing allegiance to the king of France. This they were under a necessity of doing. They lived under his jurisdiction, under his protection, and were by him secured in the enjoyment of their estates, the king of Great Britain being

unable to support and give them protection. It is laid down in the law books "that allegiance and protection "are in the nature of things reciprocal, each equally depending upon the other, and liable to be dissolved by "the other, one of them being refused or withdrawn." Had the Parliament of Great Britain, because the inhabitants of these islands after their conquest by the French lived under the protection of France in the peaceable possession of their estates, passed an act of attainder and confiscation, and included therein all the opulent planters in those islands, for adhering to the enemies of the Crown, and upon the conclusion of the war obliged the attainted to fly for the safety of their lives, seized upon their estates, and sold them for the benefit of the nation, would not the whole world have condemned and execrated so cruel, so illegal, so arbitrary, and so unjust an act? The several gentlemen last mentioned were exactly in the same predicament. They were the inhabitants of either Long Island, Staten Island, or the Island of New York. These islands were in the possession of the Americans. The inhabitants lived under their protection, and to them their allegiance was accordingly due. But in the course of the war these islands were reduced to the obedience of Great Britain, or rather abandoned by Congress, and the inhabitants left unprotected. They were therefore under a necessity of renewing their oaths of allegiance to the British King, under whose protection, upon the conquest by the British army, they consequently fell. They were abandoned by Congress. Congress could give them no protection. They were left to the mercy of the British. They took the prudent part, received pardons, renewed their oaths of allegiance, and continued in the posses-

sion of their estates, protected by the army and navy of Britain. Yet, the State of New York declared such a residence, under such circumstances, to be "an adherence to the enemies of the United States," and for such kind of adherence included several of them in an act of attainder, proscription, and confiscation; and upon the close of the war compelled them to fly for the sake of their lives, seized upon their estates like vultures, and sold them for the benefit of the State, to the total exclusion of innocent children for an act of their parents. The children were guilty of no crime, why then were they deprived of their patrimony? What a contrast between Great Britain and New York as to the respective subjects of their respective conquered islands.

As to the native Americans included in the Act who bore arms in favor of Great Britain after the Declaration of Independence, I shall say nothing, as they may, perhaps, be considered in a different light from those who took no active part on either side of the question. The same reason prevents my mentioning those who lived under the protection of the State, abandoned that protection, and fled to the British army or navy.

Among other reasons given for passing the Act of Attainder, and therein including several of the gentlemen mentioned in it, is, that they had been prisoners liberated upon parole, which parole they had broken. That the attainting the persons thus alluded to, proceeded from private revenge, malice, or political resentments, will be evident to the reader when he is informed, that out of more than 200 gentlemen, all in the same predicament, only *seven* are included in the act, to wit, Thomas Jones, Hugh Wallace, John Rap-

alje, James Jauncey, Frederick Phillipse, Alexander Wallace, and Miles Sherbrook. And these are gentlemen who had for many years prior to, and until the commencement of, the late unhappy commotions, taken active parts in all elections in favour of an interest to which a majority of this Legislature was warmly opposed.<sup>1</sup> That a breach of parole is no treason is clear. It is a breach of honour undoubtedly. That the rebel Legislature of New York, when they passed the Act of Attainder, were convinced that a breach of parole was not treason, is proved by this fact. They inserted therein a section, (the ninth), to the following effect: That besides the several matters by the laws of England declared to be evidence, and overt acts, of high treason in adhering to the King's enemies; and which are hereby declared to be evidence, and overt acts, of high treason in adhering to the enemies of the people of this State, as sovereign thereof; the following matters shall be, and are hereby declared to be evidence, and overt acts, of treason in adhering to the enemies of the State; that is to say, being at any time since the 9th

<sup>1</sup> The contending parties in New York were those of the De Lanceys and the Livingstons, the former supported by the Episcopalians, the latter by the Presbyterians. When hostilities began the former unanimously espoused the cause of their sovereign, while the latter almost as unanimously espoused the cause of the rebellion; and of the Livingston party did a great majority of the rebel Legislature consist when the act passed. And it is a fact, that there is not a person included in the act, Sir Henry Clinton, Lord Dunmore, and General Tryon excepted, who was not a warm advocate for, and zealous in the interest of, the De Lanceys. Will any man, then, of common sense, believe that private revenge and political resentments were not the principal motives of passing the act? The De Lanceys had for many years governed New York under constitutional government. But the political connection between Great Britain and the revolted colonies being broken by the Declaration of Independence, the Livingston interest took the lead under the new-fangled rebel constitution, which fully accounts for the malignancy and illegality of the Act of Attainder, as it was meant to, and did, destroy the De Lancey interest entirely, by the attainder of its friends, the proscription of their persons, and the confiscation of their estates.

of July, 1776, in any part of the United States not in the power of Great Britain, and afterwards voluntarily withdrawing to any place within the possession of the British King, or being apprehended by the Commander-in-Chief of the army of the United States, or by the Provincial Congress, Conventions, Committees, or Council of Safety of this State, or the Commissioners appointed for detecting conspiracies, or by the supreme executive authority of this State, and confined within certain limits by parole not to go beyond such limits, and breaking such paroles and escaping to any place within the power of Britain, or being permitted to go within the British lines upon an engagement to return within a certain time, and not returning within such time, but afterwards remaining in any place within the power and possession of the fleets and armies of Great Britain. This act is what is known as an "*ex post facto law*." A kind of laws made and practised only in the independent States of America. They are unknown in all civilized nations in Europe. The most arbitrary kingdoms never make use of them. But in America, during the rebellion, they were very frequent. By the clause above mentioned in the New York Act of Attainder, a number of gentlemen are declared guilty of high treason, banished, and their estates confiscated, for a breach of honour only, until the passing of the act aforesaid. That this pretended breach of parole, which the Act of Attainder has made high treason, was a *frivolous pretence only*, shall be now shown. A gentleman of character, family, and reputation, in a conversation with Governor Trumbull, of Connecticut, upon this subject, was told by him, that he wrote a separate letter to each respective person within the

British lines who had paroles from him, requiring their return. That the letters were put in a bundle, under cover, sealed, and directed to the Commander-in-Chief at New York, and were sent by a flag on board a man-of-war lying in the Sound opposite New London. That the captain gave a receipt for the parcel. This much and no more did the Governor, by his own confession, know of the matter. But he took it for granted that the Captain of the man-of-war delivered the packet as directed, and that the Commander-in-Chief forwarded the letters to the respective persons according to their several directions. Was a supposition of this kind sufficient to charge a number of gentlemen of the first character with a breach of their honour? Or was a supposition of this slender kind a sufficient reason for the State of New York to attaint, proscribe, and confiscate, the estates of such gentlemen? The letters never were delivered. This the Governor of Connecticut *knew*. This the Legislature of New York knew. A prisoner from New York, in 1779, mentioned this matter to Colonel Hamlin, of Middletown, a gentleman of the first family, fortune, character, and reputation, in Connecticut, a member of their upper house, of their High and General Court, a Colonel of the militia, and a Judge of the Maritime Court for the County of Hartford. The Colonel was all astonishment. "*I am surprised*," said he, "*that the Governor insists upon a thing of the kind, for I have heard him say in public company, not once, but twenty times, that the letters of recall sent by him to the gentlemen within the British lines were never delivered. That they were suppressed, and he knew by whom.*" I think it now fully appears, that a charge of a breach of parole was a mere pretence—a

pretence set up in order to attaint, proscribe, and confiscate, the estates of certain gentlemen, to gratify the private revenge and political resentment of certain leading members then in the Legislature of New York. To do which, they were obliged to pass an *ex post facto law*, of all laws the most damnable ever passed in a civilized nation.

It may with great propriety be also here asked, what business the State of New York had to attaint, proscribe, and confiscate the estates of persons who had (supposing the fact true, which is positively denied) been guilty of a breach of faith pledged to the Governor of Connecticut? They were by no means prisoners to the State of New York. They were taken up and transported by the express orders of General Washington, and by his directions committed to the care of Governor Trumbull. They were the prisoners of General Washington, and if they broke their paroles, they were punishable by him, or by Governor Trumbull, and by no other person, set of persons, or body of men, under Heaven. The State of New York had nothing to do with them whatever.

I shall conclude this matter by subjoining a statement of the case of Thomas Jones, Esq., one of the persons included in the Act of Attainder. I obtained it from the Secretary of State's Office. It was delivered to Lord Shelburne, while the peace was negotiating, to be transmitted to Mr. Oswald, the English Commissioner at Paris. His Lordship, I believe, gave himself little concern about it. No notice was ever taken of it. I shall insert it at length, and verbatim, though it will contain a repetition of several things already mentioned.

“THE CASE OF THOMAS JONES, Esq.”

“On the 27th of June, 1776, while peaceably living upon my own estate upon Long Island, I was taken by Major Abell and a party of rebels, in consequence of an order from the provincial Congress, and carried to New York, charged with a refusal to appear before a committee of theirs, according to the following summons served upon him a few days before :

“THOMAS JONES, Esquire.

“SIR :—By virtue of the authority vested in us, by certain resolutions of the Congress of New York, of the *fifth* day of June, in the year of our Lord, 1776, reciting, That, whereas, there are in this Colony, divers persons, who, by reason of their holding offices from the King of Great Britain ; from their having neglected or refused to associate with their fellow-citizens for the defence of their common rights ; from their having never manifested by their conduct, a zeal for, and an attachment to the American cause ; or from their having maintained an equivocal neutrality, have been considered by their countrymen in a suspicious light ; whereby it hath become necessary, as well for the safety, as for the satisfaction of the people, who, in times so dangerous and critical, are naturally led to consider those as their enemies, who withhold from them their aid and influence ; that certain persons, in the said Resolutions named, (*of whom you are one*) who are generally supposed to come under the above description, should be summoned by a certain committee, to shew cause, if any they have, why they should be considered as friends to the American cause, and as of the number of those who are ready to risque their lives and fortunes in defence of the rights and liberties of America, against the usurpation, unjust claims and cruel oppressions of the British Parliament ; which rights and liberties, and which unjust claims and cruel oppressions are specified and stated in divers Addresses, Petitions, and Remonstrances, of the present, and late Continental Congresses ; and directing certain proceedings in the said Resolutions specified, to be by the said Committee had against such of the said persons as the said Committee shall not adjudge and determine to be friends

"to the American cause. WE DO THEREFORE, in pursuance of the said Resolutions, summon you to appear before us, at the *City Hall* in New York, on Tuesday, the twenty-fifth day of June, instant, at ten o'clock, in the forenoon, of the said day, To shew cause, (if any you have) why you should be considered as a friend to the American cause, and of the number of those who are ready to risque their lives and fortunes in defence of the rights and liberties of America, against the usurpations, unjust claims, and cruel oppressions of the British Parliament; which rights and liberties, and which unjust claims, and cruel oppressions, are, as aforesaid, specified and stated in divers Addresses, Petitions, and Resolutions, of the present and late Continental Congresses.

"Dated this nineteenth day of June, 1776.

"JOSEPH HALLETT,  
"LEWIS GRAHAM,  
"JNO. SLOSS HOBART,  
"THOS. RANDALL,  
"THOMAS TREDWELL,  
"JOHN JAY,  
"GOUV. MORRIS,  
"PHIL. LIVINGSTON,  
"LEONARD GANSEVOORT.

"To the Honourable

"THOMAS JONES, Esquire,  
"Queens County."

"On the 30th of June, I was discharged by Gouverneur Morris, (the only one of the committee then in town) upon giving the following parole:

"I certify that Thomas Jones, Esq., this day appeared before me a prisoner, taken up by order of Congress, and having promised upon his word and honor to appear at such time and place as a Committee of the Congress of this Colony shall, upon reasonable notice to him given or left at his usual place of abode, direct. The said Thomas Jones is therefore hereby permitted to go unto, and reside at, his usual place of abode, until the further order of the said Congress or Committee."

"New York, June 30th, 1776.

"GOUV. MORRIS."

"On the 11th of August, 1776, thinking myself in perfect security, in consequence of the above parole, "I was seized upon by a Lieutenant Skinner and a parcel of riflemen, conducted to New York, and on the 12th, carried before a Board of Officers, consisting of Lord Stirling, General Scott, Colonel Mac-Dougal and Colonel Reed. I produced my parole. It had no effect. I was told that the parole was dissolved. That an entry of its dissolution was made in the journals of the Provincial Convention. That they had nothing further to do with me. That I was then a prisoner to the American army. I was, with a number of others, ordered to Connecticut, there to be disposed of in such manner as Governor Trumbull should think proper. The order was dated the 13th of August, and signed,

"GEORGE WASHINGTON."

"By his Excellency's command,  
"Jos. REED, ADJUTANT GENERAL."

"On the 15th of August, I was put on board of a sloop under a guard of rebels. On the 19th I arrived at Norwich, about 120 miles from New York, and was delivered over to the Town Committee. Upon the 21st I was admitted to a parole upon engaging to confine myself to certain limits, and to carry on no correspondence with the British army.

"On the 27th of August, the battle of Brookland was fought. The British proved victorious, and the rebels abandoned the Island, leaving the inhabitants to take care of themselves, Congress being unable to give them protection. The inhabitants thus abandoned by Congress, and well-knowing that allegiance and protection are, in the nature of things,

" reciprocal ties, each equally depending upon the "other, and that no allegiance could be due to a "power unable to protect them in their persons or "estates,<sup>1</sup> called town meetings, and persons from "each town were nominated to wait upon General "Howe, and make a formal surrender of the Island, "and of all the powers ever claimed or exercised by "them under Congress. It was accordingly done, "and every person who had ever acted under Con- "gress in any shape whatever, either in a civil or mili- "tary line, and then remaining upon the Island, renew- "ed his oath of allegiance, and received a pardon from "the Commissioners.

" In consequence of this surrender, Great Britain "became as much entitled to Long Island as a part of "her dominions, and to the allegiance of the inhabi- "tants that chose to remain and live under her protec- "tion, as she afterwards did to the island of St. Lucia "and its inhabitants, which she conquered from the "French and continued in the possession of until the "conclusion of the war, when it was restored to the "French, and Long Island ceded to the Americans.

" Long Island, being thus abandoned by Congress "and surrendered by the inhabitants to Great Britain, "troops were raised, forts built, men-of-war sent into "the Sound, and the militia embodied for its defence. "The officers had their commissions from General "Tryon, the Civil Governor of New York. The "island thus abandoned by Congress, and surrendered "to Britain, became a territory of the latter, and was "actually under her jurisdiction, protection, and gov-

<sup>1</sup> "Allegiance is the tie," says the learned Blackstone, "or *ligamen* which "binds the subject to the King in return for that protection which the King "affords the subject."

"ernment. Long Island being in this situation, Governor Trumbull gave me permission to return to "Long Island and there to remain, upon a parole "not to take up arms against the United States, convey "any intelligence prejudicial to them, and to return "when called for.

"In the spring of 1780, the garrisons at Oyster Bay, Huntington, and Brookhaven, upon Long Island, which consisted of a part of De Lancey's Brigade, were withdrawn, the works demolished, and the troops removed to the neighbourhood of New York. The reason for this manœuvre General Robertson, who then commanded at New York, best knows. General Howe, with a great part of the royal army, was then in Pennsylvania. Upon this event the inhabitants of Connecticut, New Jersey, and that part of New York under the power of rebellion, fitted out a number of whale-boats, which were commissioned by their Governors as private vessels of war.

"The commissions authorized them to attack, seize, and take, the vessels, merchandize, and property of the subjects of Great Britain upon the high seas, or anywhere within her territories, or under her jurisdiction, and make prisoners of such British subjects as should be found in such vessels, or upon any lands, islands, or territories belonging, appertaining to, or under the jurisdiction of, the King of Great Britain.

"These privateer whale-boats, thus commissioned, infested the coasts of Long Island, entered the harbours, captured the wood-boats, oyster-boats, fishing-boats, &c., landed and plundered the inhabitants of their money, cattle, plate, horses, slaves, goods, provisions, clothes, household furniture, &c.; made prisoners of the inhabitants, and carried them into

"their respective States; libelled the boats, vessels, "goods, &c., so taken, in their Maritime Courts as the "property of British subjects, and as such condemned "them (being first found British property by an inqui- "sition taken upon the oaths of 12 reputable freehold- "ers). The prisoners being boatmen, sailors, and "farmers, were exchanged as British prisoners of war "for subjects of the United States from the American "prisoners in New York.

"In the night of the 6th of November, 1779, I was " (though then upon parole) taken prisoner, my house "broken open, and plundered by the crews of whale- "boat privateers, commissioned by the Governor of "Connecticut. I was carried, with the stolen property, "into that State. When made a prisoner I claimed the "benefit of my parole. It had no effect. To my great "surprise I was told by the Commodore (one Hawley, "a low-lived fellow, a broken shopkeeper in New Eng- "land) that I had broken it, that I was to return when "called for, that I had been called for, and that I had "refused to return. As this was a falsehood, it sur- "prised me much. It was only a pretence. My prop- "erty thus taken was carried to Fairfield, in Connecti- "cut, and libelled in the Court of Admiralty as the "property of a British subject, and, after an inquiry "by 12 men upon oath, they declared me a British "subject, the effects libelled my property, and as such "the Judge condemned them to the use of the captors.

"On the 12th of November, 1779, Colonel Daven- "port demanded the following parole of me. It was "drawn by himself:

"I, Thomas Jones, Esq., of Oyster Bay, Long Island, do acknow- "ledge myself a *prisoner of war* to the United States of America, "and do, on my sacred honor, engage and promise not to say, or do,

"anything contrary to the interest and Independence of the said United States. And I do, upon my honour, further promise not to go out of the bounds of Stamford, in the State of Connecticut, until further orders from Colonel Davenport, or until I am regularly exchanged.

" THOMAS JONES."

"A true copy of a parole taken of the Hon. Judge Jones."  
"STAMFORD, 12th November, 1779.

"Taken by Colonel Davenport and Major Davenport, in the presence of Samuel Davenport. A true copy. Witness,  
" SAMUEL DAVENPORT."

"On the 13th of November, 1779, Governor Trumbull, in a letter to Sir Henry Clinton, proposing an exchange between me and General Silliman, expresses himself thus: 'The fortune of war having put Judge Jones, a *subject of your King's*, into the power of the United States, &c.'

"On the 17th November, 1779, Col. Davenport, Col. Cook, and Thaddeus Burr, Esq., three of the Governor's Council of Safety demanded the following parole of me.

"I, Thomas Jones, of Long Island, do acknowledge myself a prisoner of war to the United States of America, and do, on my sacred honour, engage and promise to say nor do anything contrary to the interest and Independence of the said United States, and I promise to go from Fairfield to Lebanon in the State of Connecticut to Governor Trumbull, and wait his further orders.

" THOMAS JONES.

"Fairfield, 17th Nov., 1779, a true copy of the parole taken of Judge Jones by Col. Davenport, Col. Cook, and Thaddeus Burr, Members of the Governor's Council of Safety.

"Test. THADDEUS BURR."

"On the 22d of November, 1779, I gave the following parole to Governor Trumbull:

"I, Thomas Jones, of Long Island, do acknowledge myself a prisoner of war to the United States of America, and do, on my sacred honour, engage and promise to say nor do anything contrary to the interest and Independence of said United States, and do promise to go from Lebanon to Fairfield, or Stamford, in the State of Connecticut, and submit myself to the further directions of Colonel Davenport.

"THOMAS JONES."

"Lebanon, 22d Nov. 1779,

"Copy. JONATHAN TRUMBULL."

"On the 25th of Nov., 1779, I gave the following parole:

"I, Thomas Jones, of Long Island, do acknowledge myself a prisoner of war to the United States of America, and do, on my sacred honour, engage and promise to say nor do anything contrary to the interest and Independence of the said United States, and I do promise to go from Fairfield to Middletown in the State of Connecticut, and there submit myself to the directions of Jabez Hamlin, Esq., until exchanged.

"Fairfield, 25th Nov., 1779.

"THOMAS JONES."

"A true copy of a parole taken of Thomas

"Jones, Esq., by Col. Davenport.

"Test. THADDEUS BURR."

"On the same day and at the same time I received the following pass:

"Thomas Jones, Esq., a prisoner of war to the United States of America, is permitted to pass from this place to Middletown, there to remain under direction of Colonel Jabez Hamlin, he having given his parole accordingly.

"Fairfield, Nov. 25th, 1779.

"ABRAHAM DAVENPORT."

"On the 27th of December, 1779, I received the following pass :

"MIDDLETOWN, STATE OF CONNECTICUT."

"Judge Jones, a prisoner of war from Long Island, has my permission, being under my direction while here, by the Governor's orders, to go from hence to Fairfield within this State, and to return within ten days, and all persons whatever are hereby forbidden from giving him any obstruction in going and returning as aforesaid.

"Dated this 27th Dec. 1779.

"JABEZ HAMLIN, *Magistrate.*"

"On the 16th of February, 1780, I received the following certificate from Governor Trumbull, under the Great Seal of Connecticut, to wit :

"STATE OF CONNECTICUT. BY THE GOVERNOR."

"Permission is hereby granted to Thomas Jones, Esq., of Long Island, a prisoner of war to the United States, to go into New York in Exchange for General Silliman, a subject of the United States, now a prisoner there, agreeable to the proposal of the Commander-in-Chief of the British forces in New York, which is agreed to, and the Commanding Officer at the lines is hereby directed to give the necessary orders for the said Thomas Jones's passing the Guards accordingly.

"Given at Hartford, in said State, this 16th February, 1780.

"JONATHAN TRUMBULL."

"In all the foregoing paroles, passes, and permissions, which were drawn, either by the Governor himself, by some of his Council of Safety, or other leading men in the State, I am said to be 'an inhabitant of Long Island, and a *prisoner of war* to the United States of America.' As such, I was exchanged.

"Notwithstanding the several facts, the Legislature of New York passed an Act by which they attainted

"me, proscribed me, and confiscated my estate, for  
"'adhering,' as the Act terms it, '*to the enemies of the  
State,*' though at the time of passing this Act, Long  
Island was under the jurisdiction, protection, a  
territory belonging to, and the inhabitants subjects  
of, Great Britain. It had been conquered by the  
British, abandoned by the rebels, surrendered to the  
King, and the oaths of Allegiance renewed, by the  
inhabitants. It must also be observed that the '*ad-  
herence*' charged in the Act was nothing more than  
living upon Long Island, (then in actual possession  
of Great Britain) upon my own estate, a prisoner  
upon parole, by the permission and consent of the  
Governor of Connecticut, to whose care I had been  
committed by the express order of General Wash-  
ington, signed by himself, and countersigned by  
Joseph Reed, Esq., then Adjutant-General of the  
American Army.

"THOMAS JONES."

"London, 10th June, 1783."

The above case speaks for itself.- It requires no comments. It is a contradiction in terms to suppose Mr. Jones, under the circumstances above mentioned, could possibly be deemed a subject of the United States. Nor could his residence upon Long Island in the situation before related, by the most strained construction, be construed into an "*adherence*" to the enemies of the State. He was a *prisoner when the act passed*. This the Legislature well knew, but private revenge, low malice, or political resentment, and perhaps all three, were the foundation of his attainder, proscription, and the confiscation of his estate. His near alliance by marriage with the De Lancey family

had, no doubt, great weight, and powerfully operated upon this occasion. I have copied this "case," as presented to Lord Shelburne, pending the negotiation of the treaty of peace, as I thought it applicable to the subject.

Besides Mr. Jones, Colonel Phillipse, James Jauncey, and John Rapalje, Esq., Hugh Wallace, Miles Sherbrook, and Alexander Wallace, also included in the act, were in the same situation. They were prisoners to Washington, were under the care of Governor Trumbull, by him admitted to their paroles, and when the act passed were living in consequence of such paroles upon their own estates, within the British lines, in a territory belonging to, and under the actual jurisdiction and protection of Britain. But private revenge, inveterate malice, and political resentment, prevailed in that vindictive and money-seeking Legislature against law, justice, honour, honesty, and even equity itself.

That the New York Legislature which passed the act of attainder were actuated by a vindictive spirit, by malevolence, and political resentment is shown by the following, which is averred as a fact that cannot be denied. Samuel Townsend, James Townsend, and Zebulon Seaman, Esq., were active members in the first Provincial Convention. George Townsend, Esq., was Chairman of the Queens County Committee. Hendrick Onderdonk, Esq., was a leading member in that Committee. Colonel Remsen commanded a regiment of militia, under a commission from Congress. James Van Cortland, Frederick Van Cortland, David Clarkson, William Walton, Samuel Jones, and John De Lancey, Esqs., with Joseph Hallet, Abraham Walton, John Vanderbilt, Cornelius Clopper, and Richard

Sharpe, merchants, and Peter Van Schaack, Esq., were members of the first Committee chosen for the city of New York, and some of them active members of the Provincial Congress. They took the "association," the oath of allegiance to Congress, and abjured their Sovereign. When the rebel army abandoned Long Island and evacuated New York, these people remained in the possession of their estates, applied for, and received pardons, renewed their oaths of allegiance, and lived under the protection of Britain until the evacuation of New York by the royal army. When the act of attainder passed, these gentlemen were all living within the British lines, connected with, or carrying on, trade, engaged in privateering, or disposing of the produce of their farms for the use of the British army. Not one of these persons is included in the act. Yet, Isaac Low, Esq., who was exactly in the same predicament, is attainted. The Legislature strained this act so far as to make it *ex post facto*, in order to ruin some people by making a capital offence of what was before scarcely criminal. Now let me ask the gentlemen who composed the New York Legislature, when the act of attainder passed, whether this conduct of the several persons above mentioned was not actually and really an "*adherence*" to the enemies of the State? And if so, why were they not included in the act? The answer is plain, the Legislature was solely governed by malice, revenge, and political resentments.

## CHAPTER XVI.

THE Americans made great complaints during the war against the royal army for burning houses, mills, and towns. It was called inhumanity, and contrary to the usage of civilized nations. And in these complaints they were supported by an unprincipled faction in the British Parliament. Let us set this matter in its proper light. Falmouth, in New Hampshire, was bombarded by a man-of-war, and a few houses burnt. Stonington, in Connecticut, shared the same fate. Kingston, in Ulster County, in the province of New York, was burnt, and a few houses above the Highlands, on the east side of the Hudson. Norwalk and Fairfield, a few houses at Green's farms, and part of Danbury, in Connecticut, with Charlestown, near Boston, were burnt. A few houses at Northcastle, and Bedford, in the province of New York, and a small village called "The Continental Village," upon the manor of Cortland, were also burnt, with a few houses at Peekskill, and some at Springfield, in New Jersey. Now let me ask who burnt the noble town of Norfolk, in Virginia? The Americans. Who burnt a fourth part of the city of New York, a city nearly as large as Bristol, in England? The Americans. Who set New

York on fire a second time, and burnt above 100 houses? The Americans. Who burnt nearly 30 houses upon Long Island, when Washington abandoned his lines? The Americans. Who burnt every house at the White Plains, with the Court House and church? The Americans. Who burnt General De Lancey's noble seat upon New York Island? The Americans. Who burnt all Colonel Bayard's houses, out-houses, barns, and stables at Hoboken and Weehawken? The Americans. Who burnt every house without the walls of Quebec? The Americans. Who burnt above 100 dwelling-houses, as many barns, and a number of mills, upon their retreat out of Canada in 1776? The Americans. Yet, these were the people who had the impudence to charge Great Britain with carrying on an inhuman war, a war contrary to the usage of civilized nations.

In order to show that the burning of towns in times of war, in all civilized nations, is a usual practice, take the following: In July, 1755, General Moncton with a small detachment of regulars, and about 2,000 New England men, besieged and took a French fort in Nova Scotia, called Beausejour, and another at Bay Verte, also in Acadia, upon the banks of the Bay of Fundy. Upon the surrender of Beausejour, one of the articles of capitulation was, "That the Acadians as "they had been forced to take up arms in favour of "the French, on pain of death, should be pardoned." Notwithstanding which, a Major Fry was sent from the fort up the river eight leagues, the following September, and landed at an Acadian village, called Chippoudie, with orders to "bring off the inhabitants." Upon the approach of the party the inhabitants fled, a few old women and some young children excepted. These

were brought away. The village, consisting of 181 houses and barns, was plundered, and then reduced to ashes. The Mass house was robbed of its plate and ornaments and then burnt. They then proceeded up the river to Petitcoudiack, after the plundering of which it was also burnt. They also plundered and burnt all the houses and barns for 15 miles in length on one side of the river, and six miles on the other. This party consisted of *New England men*, the commanding officer a *native of the Massachusetts*. Upon the plundering and burning of their habitations a number of the Acadians fled to Canada. In the same year a party was sent from Halifax, who took from Menan, Annapolis, and from those quarters, at least 1,500 men, women and children, and carried them to that place. All their houses, villages, churches, and barns, were plundered and burnt. 10,000 black cattle, as many sheep, and more hogs, were taken away and killed for the use of Admiral Boscawen's fleet, then at Halifax. Nearly 5,000 horses were brought to Halifax and sold for the benefit of the captors. The poor inhabitants, who were known by the name of "Neutrals," though subjects of Great Britain, were by this manœuvre reduced from affluence to poverty, deprived of good farms, cultivated and improved by their ancestors for ages, where they enjoyed every comfort in life. They had neither doctors, lawyers, nor apothecaries, of course a happy people. Their clergy all understood something of physic, and prescribed without a fee or reward. All disputes were referred to a set of magistrates called deputies, and every decree by them made was submitted to with the greatest alacrity, and was forever thereafter binding. No appeal was ever made from a judgment given by the deputies.

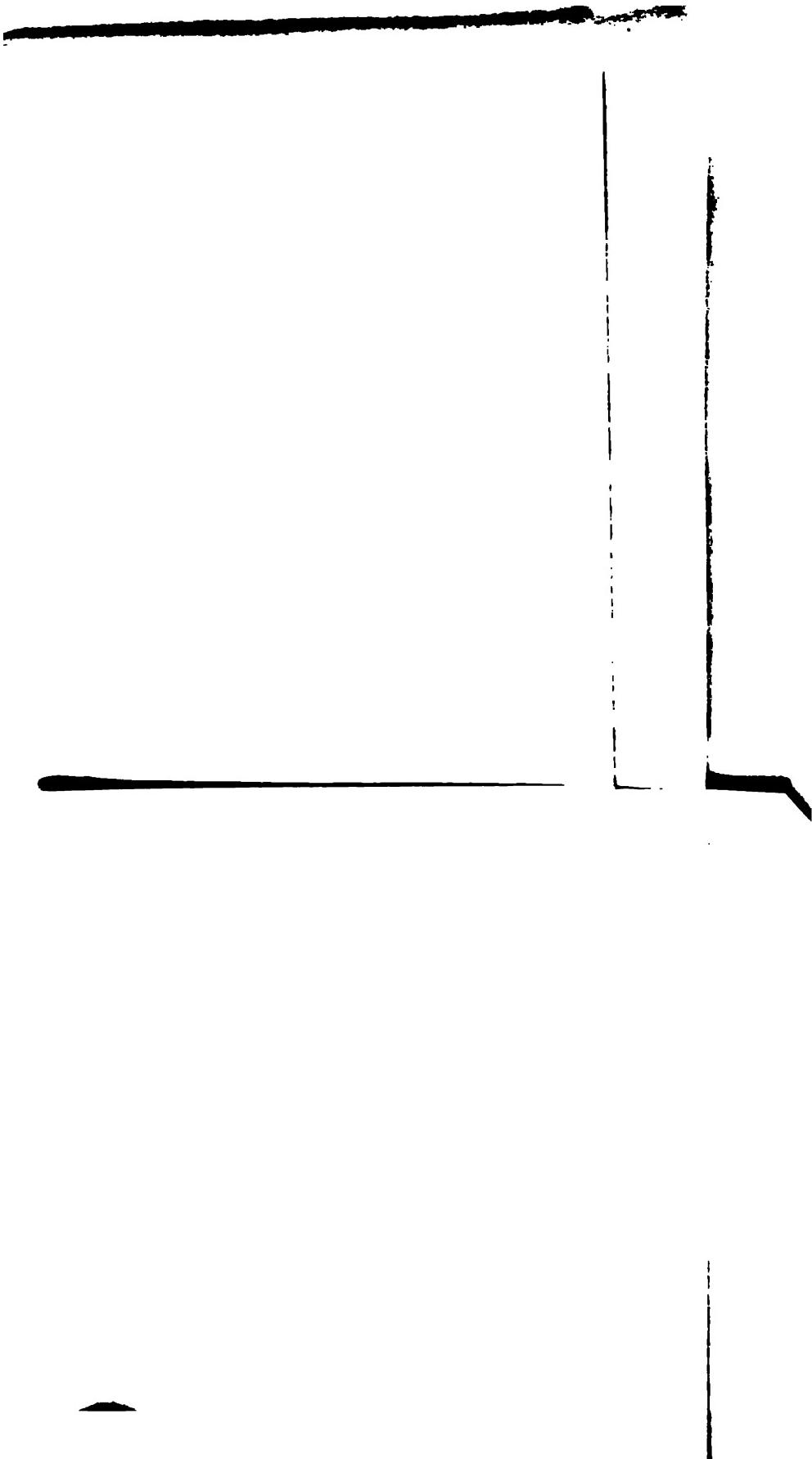
Every controversy, without a lawyer, a clerk, or jury, was settled in an hour at furthest. No expense attended the settlement. What a happy people! The only happy people, I believe, at that time, before, or ever since, in his Majesty's dominions. These poor people were, while as they thought in perfect safety, deprived of every enjoyment, under heaven. Their priests and deputies sent to Canada, their towns, villages, farm-houses, and barns burnt; their farms laid waste, their cattle, horses, hogs, and sheep taken from them, and themselves carried to Halifax in the most ignominious manner as prisoners. This was bad enough, yet this was not all. They were confined at Halifax until vessels could be procured for their transportation. When this was done, the poor souls, with nothing but their clothes upon their backs, were driven like a flock of sheep on board the transports; in consequence of which a husband was put on board one ship, a wife in another, a couple of daughters in a third, and a son in a fourth. These living cargoes were carried to, and landed within, the then British Colonies. The consequence of which was, that a husband was landed in New Hampshire, the wife in Georgia, the son in New York, and the daughters in Virginia. The very relation of this transaction is shocking to humanity. Not a single family was ever totally collected together again. But what is (if possible) still worse, these poor souls were landed in the several Colonies entire strangers, without clothes, without money, without provisions, without friends. The men who had lived in affluence, were obliged for a maintenance to act as common labourers, their wives by washing and ironing. The children were bound out, and the old and infirm maintained by the parishes in which they lived.

In 1758, St. Malo, Cherbourg, and Havre de Grace, upon the coast of France, were bombarded by the British and nearly destroyed. When General Wolfe, in 1759, despaired of taking Quebec, he sent a detachment down the river and burnt 15 villages, with all the farm-houses and barns, for four miles back on each side of the river, for 30 miles in length. He burnt every house and destroyed every farm upon the Isle of Orleans. In 1760, when General Murray went up the river St. Lawrence, to form a junction with General Amherst, who went by the way of Ontario, and General Haviland, who went by the way of Champlain, in the neighbourhood of Montreal, he declares in his public despatches, that "though his nature revolted" at so inhuman an act, yet the nature of the service justified his conduct. Whenever a gun was fired from a single house, he destroyed it, if he was fired upon from a village, he burnt it, and if from a fortification, he demolished it. A number of instances of this kind, in his progress up the river, happened. These things, in those days, were thought nothing of. No clamours were made in England, none in Parliament, none in the Colonies. The neutral French in Acadia were British subjects. They were charged, and no doubt justly, with harbouring, "*adhering to*," succouring, and giving information to the French in Canada, of the situation of the British in Nova Scotia. This was deemed treason, this was called perjury, and this was called "*an adherence*" to the enemies of Britain. Upon this ground the horrid act was justified. The distressing our natural enemies by burning towns upon the coast of France, by General Wolfe, in burning farm-houses, fishing villages, and country towns, was looked upon as justifiable, as the nations were at war,

though the poor souls, thus burnt out, had no hand in the controversy, nor had ever been in arms. No complaints were ever made of the destruction made by General Murray upon the poor farmers in his passage up the river, by burning their houses, their churches, their barns, and desolating their farms. Times, however, are extremely changed. A rebellion broke out in America. Thirteen Colonies declared themselves independent, shook off their allegiance, took up arms, fitted out privateers, and captured the vessels of British subjects; imprisoned, harassed, and plundered her loyal subjects who dared to avow their attachment to Britain, insulted their wives, and abused their children. Notwithstanding this, we saw Peers of the first rank in the House of Lords, and members of the first consequence in the Commons, openly, publicly, and without hesitation, justifying the rebellious proceedings of the American Colonies, and blaming our Generals and the Ministry, because a few rebel towns and houses were burnt by the British army, in that country. These people at length got into power, they patched up a peace, they declared the Colonies independent, they dismembered the Empire, they almost ruined England, they lost Ireland, they sacrificed all the Loyalists in America, gave away their estates, and left them in the power of persecuting rebels. The terms of the peace were so ignominious that they were condemned by the House of Commons, execrated by the nation at large, and ridiculed by all Europe.

Instead of giving the rebels the territories comprised in the boundaries, their several grants, and charters, which were all they had a right to expect, or ask for, these peace-makers ceded the lands of Britain, including the forts of Frontenac, Oswego, Niagara, and a





number of large towns not included in the grant of any one of the revolted colonies, and actually at the time in the possession of the subjects of Britain and included in the boundaries of Canada, a tract of land containing more square acres than half Europe, and with it all the lands, settlements, farms, towns, castles, improvements, and hunting-grounds of our faithful Indian allies, who warmly attached themselves to, and assisted, us in all our wars in America, from our first settlements in that country until the recognition of American Independence by an inglorious and ignominious peace, without a term, a condition, or a stipulation in favour of his Majesty's loyal subjects, whether residing within, or without, some one or another of the rebel States. Here let me ask, can a King of England dismember his empire? Can he give away the Isles of Wight, of Man, of Jersey, Guernsey, or Alderney? If he can, is it to be done without making full and adequate compensation to the persons holding real estates in these Islands, so given away for the sake of a peace?

As the Acadians have been mentioned, the following extract, taken from a pamphlet published by the Abbé de Robine, may not be uninteresting:

"The best of Nova Scotia is that part called Acadia,  
"where a number of French settled in 1664. These  
"people were known by the name of *Neutrals*, and  
"lived in a perfect state of independence after the  
"province was given to England by the treaty of  
"Utrecht, having sworn never to act against their na-  
"tive country, to which, as well as to their religion and  
"priests, they were most enthusiastically attached.  
"Soon after 1749, perceiving the English encroach-  
"ments upon them, they determined rather to remove

"to Canada, than run the risk of having their religion  
"contaminated by an intercourse with heretics. But  
"the English, getting notice of their design, seized  
"upon all who were not gone, embarked them aboard  
"their ships, and transported them to different parts  
"of the then English colonies, where the greatest part  
"died of grief and vexation."

## CHAPTER XVII.

THE characters of several of the persons in the foregoing pages, particularly mentioned as having taken conspicuous parts in the American rebellion, are here given.

GENERAL PHILIP SCHUYLER is a native of Albany, in the Province of New York. His grandfather, Captain John Schuyler, had been Colonel of the militia for that county, and a representative in General Assembly for that city. He had a large and valuable estate in land at Saratoga,<sup>1</sup> which, upon the death of his eldest son Philip without issue, who was killed by the Indians in 1746, at that very place, his improvements burnt, and his property carried away, descended to his grandson, the now General, then a mere youth, the eldest surviving son of John Schuyler, his youngest son, by his wife Cornelia, the youngest daughter of Stephanus Van Cortland. Philip's father, having but little personal estate, embarked in trade in Albany, and sold provisions. In 1755, a war broke out between Great

<sup>1</sup> Now rendered famous by the surrender of General Burgoyne and his whole army to the rebel General Gates, in October, 1777, by a convention scandalous to Britain, and more so to America, as Congress broke and violated every article contained in it.

Britain and France, and an expedition being projected, under the command of General, afterwards Sir William, Johnson, against Crown Point, Philip Schuyler applied for and obtained a Captain's commission from Governor De Lancey, of whom he was a first cousin, their mothers being sisters. He now commenced military life, raised his company, and went with the army as far as Lake George. A few days before the glorious action which was fought upon the banks of that lake, on the 8th of September, 1755, between General Johnson and the Baron Dieskau, in which the latter was defeated and taken prisoner, Schuyler received an express to return to Albany, in order (as it was given out) to marry a Miss Kitty Van Rensselaer,<sup>1</sup> the daughter of Colonel John Van Rensselaer, of Claverack, on the east side of the river, below the city. It was known when he left the army that an action must commence, and that soon. He returned to Albany, married the lady on the 17th of September, 1755, and never after joined the army. In 1756, Colonel Bradstreet, who was extremely pleased with the conversation and behaviour of this lady, and being then Quarter-master and Commissary in that part of the province, appointed Schuyler his Deputy, and as such he was constantly employed at Fort Stanwix, Fort George, or Oswego. By this means, from moderate circumstances he became rich. In 1761, Bradstreet sent him to England to settle his accounts with Government. He was gone more than a year. Schuyler returned in 1762. Bradstreet advised him to settle, and improve his lands at Saratoga. This advice Schuyler followed, and was, of course, two-thirds of his time from home. It was of little

<sup>1</sup> A lady then of great beauty, shape, and gentility. She was, before her marriage, known by the name of "The Morning Star."

consequence. Bradstreet managed his affairs in Albany, and in this very year built a most elegant house, in a beautiful situation upon an eminence at a place called "The Pasture," about half a mile from the city, and most gallantly made a present of it to Mrs. Schuyler.<sup>1</sup> In 1769, Schuyler was returned as one of the members for the city of Albany, in General Assembly. The storm was now gathering, and everybody could see that a quarrel between Great Britain and America was in embryo. Schuyler took an active part against Great Britain. His principal adviser was a relation of his by marriage, one William Smith, Esq., a lawyer in New York. Mr. Schuyler constantly opposed every measure that was proposed in the Assembly for a reconciliation between the two countries, and wished all the petitions, remonstrances, and complaints, sent from the Colonies to England at the bottom of the sea. In 1774, the first Congress ordered Committees to be held in every town, county, and district, within the thirteen colonies, to carry their recommendations into execution. Schuyler took the lead in Albany, and was chairman both of the City, and County, Committee. In 1775, he was elected a member of the Provincial Convention for the Province of New York, and by this Convention he was appointed a delegate in the Continental Congress. This Congress assembled in May, 1775. It practically declared war against Great Britain, and ordered an army raised. Among the Generals appointed upon this occasion, Schuyler was one. He was directed to command an army, lead it into Canada, and subdue that colony into obedience to the Continental

<sup>1</sup> The Marquis De Chastellux, in speaking of this house, says, "Schuyler was his own architect." This is evidently a mistake, the whole was built under the immediate direction of Bradstreet.

Congress. He proceeded to Albany, had some business of consequence to transact there, and Montgomery proceeded with the army, and laid siege to St. Johns, at the head of Champlain. Schuyler's business in Albany being finished, he proceeded to Crown Point, on his way to the army of which he was the Commander-in-Chief. Here he received the most pressing messages from Montgomery to join as soon as possible. He embarked upon the lake, and went as far as the Isle aux Noix, a small distance from St. Johns. The roaring of the cannon was here perfectly distinguishable. He was seized at this place (as his letter to Congress expressed it) with a most "inveterate disorder." This "disorder" returned unfortunately as he was wanted in Canada, and so continued until the death of Montgomery, the defeat of the rebels in 1776, and their total evacuation of that country. He was never afterwards employed by Congress in active service as Commander-in-Chief of an army. The only figure he cut in a military line during the whole of the war was in his remarkable "Peacock" expedition against Sir John Johnson, already particularly related.

The Marquis De Chastellux says, "That General Schuyler, besides his large paternal estate, by marrying an heiress of Mr. Van Rensselaer, who enjoyed "a whole colony, amazingly increased his estate." Here the Marquis is much mistaken. The manor, or colony, of Rensselaerwyck extends for 24 miles along each side of the Hudson, and 12 miles into the woods on both sides. (Out of this grant the city of Albany is excepted.) The Lord of the manor is called "*The Patroon*," the Dutch for the word lord. The manor still exists. The Patroon holds all upon both sides of the river. John Van Rensselaer, whose daughter

Schuyler married, was a descendant of a younger son of a former Patroon, who had a small portion of land at Claverack upon the east side. His eldest son, who died many years ago, married a daughter of Nicholas Bayard, Esq., of New York, by whom he left a son, who now possesses his grandfather's estate at Claverack. John Van Rensselaer had two other sons, both of whom served as officers in the rebel army during the war. As John Van Rensselaer, Esq., was not a moneyed man, the real estate an entail, and two sons to provide for, besides Mrs. Schuyler, the General could not have obtained any great addition to his fortune, in consequence of his marriage.

## CHAPTER XVII.

LORD STIRLING, commonly so called, was a native of New York. His father, James Alexander, Esq., was born in Scotland. Upon the suppression of the rebellion there, in 1715, he removed to America, and settled in New Jersey. This was a proprietary government, and the proprietors, in general, Scotch. They appointed him their Surveyor-General. He now studied the law, and being remarkably industrious, soon acquired a very considerable knowledge of that profession. As he was by no means a speaker, he confined himself chiefly to the practice of the Court of Chancery. He was afterwards Deputy Secretary of New York, to which city he removed, and by marrying an industrious Dutch woman, who kept a retail shop, he, by the industry of his wife as a shopkeeper, his own as a lawyer, and the emoluments of his two offices, died about the year 1756, possessed of a very considerable estate. He was himself a proprietor in New Jersey, and had, as such, located upon large tracts of land in that province. The General Lord Stirling was his only son. He was brought up a merchant, and when out of his time entered into partnership with Peter Van Brugh Living-

ston, who had married his sister, and whose sister Mr. Alexander had also married. In the way of their business, they bore the character of fair traders and honest men. In 1755, General Shirley, then Governor of Massachusetts, commanded an expedition against Niagara. Mr. Alexander attended him as his secretary. General Braddock, who was Commander-in-Chief in America, being defeated and slain upon the banks of the Monongahela, Shirley succeeded to the command as the senior General in America. No attack was made upon Niagara. Some forts were built at Oswego, a strong garrison left, and General Shirley returned to New York. Early in 1756, Shirley was superseded, and the command given to Lord Loudon. His government was also taken from him, and conferred upon Thomas Pownal, Esq. Shirley left America the same year and went to England, and Mr. Alexander, as his secretary, attended him. In England he lived at a very great expense, kept the best company, entertained, was at all places of diversion, and squandered large sums in the most extravagant and dissipated manner. Visiting Scotland, by the advice of some of his friends, he assumed the title of Lord Stirling, (which had been long dormant) in consequence of its having been formerly enjoyed by a family of the Alexanders. When he returned from North Britain, in possession of the arms, and vested as he thought with the title, of an Earl, he applied to the house of Peers for a confirmation. His cause was heard, his evidence produced, and his claim appeared so futile that the Lords rejected it without a dissenting voice. They went still further. They made an order forbidding him to assume the title and arms of Earl of Stirling, upon pain of being led round Westminster Hall with labels

upon his back and breast, with the word "Impostor" in capitals on each.

Being thus prohibited from wearing the arms, or assuming the title of "Earl of Stirling," his grandeur was gone, and what was worse, his money. He, therefore, (being over head and ears in debt) privately left England, and in October, 1761, arrived at New York. Though the title and arms were forbidden in England, the decision had no effect in America. The arms were upon his carriages, and his title given him in courtesy by persons of all ranks. In short, he cut the figure of a real Earl. He brought with him horses and carriages, a valet de chambre, a butler, a steward, a friseur, a cook, a coachman, and a mistress. He cut the most splendid figure for a while. It could not last long without money. Large debts had been contracted in England, his creditors there became clamorous. Money was also to be had to support his grandeur, and keep up the dignity of an Earl. The father and mother were both dead. Nothing further could be expected from that quarter. Recourse somewhere must be had, and he borrowed from every person that would lend him, securing the payment by mortgages upon his estates. By these means he paid off his English debts. For the maintenance of himself and family, he still kept borrowing, and still kept mortgaging. He was, however, obliged to retrench. The valet went first, then the friseur, next the butler, then the coachman, at last the cook, and madame finding cash low, prudently returned to England. His Lordship now left New York, and settled in New Jersey, upon one of his mortgaged farms. He was then Surveyor-General, and one of his Majesty's Council. But matters were gone too far. His Lordship was too much involved.

His affairs were irretrievable. His personal estate was gone, his real encumbered with debts to the amount of at least £50,000, and constantly increasing by the annual interest. He was advised to dispose of his estate by way of lottery. This could not be done without an act of the Legislature. He applied, accordingly, his wishes were gratified, and a bill for the purpose passed. But the tickets being high, numerous, and the Colonies having been taken in a few years before by a lottery of the same kind, established by one Rivington, a bookseller in New York, for the sale of some lands in Virginia, sold slow, notwithstanding all the influence of his Lordship, and the efforts of his creditors. Before the tickets were disposed of, the rebellion broke out. His Lordship was now out of danger. Civil law was at an end. No action could be brought against him. His Lordship had nothing to lose, something might be gained. He took an active part against Great Britain, and was by Congress appointed a Brigadier-General and Commandant of all the troops raised in New Jersey. Upon raising an American army, to pay them Congress ordered a large sum of paper money struck, which they declared equal in value to gold and silver, and that any man who should refuse to receive it as such should be publicly advertised as an enemy to his country. To enforce the circulation of this trash, the Legislature of New Jersey passed an act making it a legal tender in all payments, and if the creditors lived within the British lines, a payment by the debtors into the Provincial Treasuries of any of the States should be a legal payment, and a full discharge of any debt whatever. The Continental cash soon began to depreciate, and in 1779 was so low that a Spanish dollar, or piece of eight shillings, would purchase eighty paper

dollars. Of the aforesaid act and this amazing depreciation, his Lordship availed himself. He purchased Continental money, and with £1,000 of gold and silver he discharged all his debts, though they amounted to nearly £80,000. His Lordship continued in the rebel service until 1782, when he died at Albany, having been Commander-in-Chief in those parts for some time. He devised one-half of his estate to his wife. The other half to his youngest daughter, the wife of one William Duer, a West Indian, settled in the province of New York for several years, as great a rebel as ever had an existence. When the war commenced, he was amazingly in debt; he discharged his debts in the same honourable manner that the father-in-law did his. His Lordship disinherited his eldest daughter because she lived within the British lines, and was married to a Loyalist, Robert Watts, Esq., eldest son of the Hon. John Watts, by his wife Ann, the youngest sister of Governor De Lancey.

The Marquis De Chastellux in speaking of his Lordship says, "his birth, title, and property, have given him more influence in America than his talents could ever have acquired him. The title of 'Lord,' which was refused him in England, is not here contested. "He is accused of loving the table and the bottle as much as becomes a Lord, but more by far than becomes a General. He was an unfortunate officer, was taken prisoner at Long Island in August, 1776. "In June, 1777, he lost, in a skirmish at Elizabeth-town, 300 men and three pieces of cannon, and at Brandywine he commanded that body which was defeated by Lord Cornwallis."

## CHAPTER XIX.

GEORGE CLINTON, the first elected Governor of the State of New York after the Declaration of Independence, is the youngest son of a Colonel Charles Clinton, a native of Ireland, whose abode was at a place called Little Britain, in the County of Ulster, in the Province of New York. He was a surveyor of note, and made money by it. He had also a good farm. He was, like all Irishmen, open, generous, and hospitable. He was an honest man, and a loyal subject. He commanded a battalion of provincials, in the pay of New York, in the campaigns of 1758, and 1759. His two eldest sons served as officers in the same corps. The Colonel had procured for George a reversionary commission as Clerk of the Inferior Court of Common Pleas for the County of Ulster, to take effect upon the death of the then incumbent. The father was afterwards made Colonel of the Ulster County Militia, which commission he held to the time of his death, respected, esteemed, and beloved. He died about the year 1771, an old man, regretted by all his friends, neighbours, and acquaintances. His two eldest sons served as officers under Congress the whole of the war, the one as a General, the other as a Colonel.

George, the youngest, in order to qualify him for the execution of his expected office, was, about the year 1758, apprenticed to William Smith, Esq., an attorney in New York. He served about three years, and then obtained a license to practice in the Inferior Court of Common Pleas for the County of Ulster only. By the death of the incumbent, George soon after got possession of the office. He holds the commission still, though Governor of the Province, not under his original Letters Patent, but under a grant from a committee called a Committee of Appointment. He lived at Kingston, paid his addresses to, and married, a pretty Dutch girl, Miss Tappen, the daughter of an eminent, substantial, burgher of that Corporation. This match was the foundation of all his after greatness. His wife had a brother, a Christopher Tappen, one of the Trustees of, and Clerk to, that Corporation. A young fellow of influence, of fortune, and well respected at Kingston. In the Dutch towns in the Province of New York, (Kingston is entirely so) the inhabitants are all related. Cousins in the fifteenth degree are looked upon as nearly related, as cousins-german are in an English town. The Tappen family, in consequence of this kind of consanguinity, was related to almost the whole town. Clinton, in right of his marriage, of course, became also related. Clinton had art, cunning, and a good share of understanding. He was a rigid, true, Presbyterian, and had a good deal of hypocrisy. He made the most of his connection. He became popular in the Corporation.

In 1768, he was returned, as one of the members for the County of Ulster, to the General Assembly. Sir Henry Moore was at this time Governor. It was necessary for his Excellency to have a majority in the

house. He coaxed Clinton, and by giving him a license to practice in *all* the courts within the Province, he fairly secured him. In 1774, the colonies, thinking themselves aggrieved by some acts of Parliament then lately passed, appointed a Congress consisting of deputies from each colony, to be held at Philadelphia in the month of September. They accordingly met, entered into a number of violent resolutions, sent inflammatory letters to England, Ireland, and Canada, with humble petitions at the same time to the Crown, and remonstrances to Parliament, couched in pretty moderate terms. This Congress also adopted a set of treasonable resolutions that had been entered into by a Committee of the County of Suffolk, in the Massachusetts Bay, which were entered upon their Journal at large; passed a resolve forbidding all trade or intercourse with Great Britain, Ireland, or the West Indies, and forbid the use of tea, and the exportation of sheep. In short, they impliedly declared war against Great Britain. They ordered committees appointed in every city, county, town, and district, throughout the colonies to see their resolutions carried into execution, with full power and authority to punish any person who should dare to disobey them.

Clinton was elected Chairman of the Ulster County Committee, and of that of the Corporation of Kingston. Clinton was now in full power, as absolute and despotic in Ulster, as the French King in France, and as cruel and arbitrary as the Grand Turk. He tried, condemned, imprisoned, and punished the Loyalists most unmercifully. (They were by his orders tarred and feathered, carted, whipped, fined, banished, and in short, every kind of cruelty, death not excepted, was practised by this emissary of rebellion) in

order to compel them (those within his jurisdiction) to obey, conform to, and execute the laws, rules, and recommendations of Congress. In January, 1775, the General Assembly of New York was convened at New York. After sitting a few days, a motion was made by Clinton, and seconded by his colleague, one De Witt, to take into consideration, approve, and confirm, the proceedings of Congress. A warm debate took place. The house was rather thin. The motion was supported with great vehemence by the republicans, and with equal vehemence opposed by the Loylists. The question was at last put, and monarchy carried its point. The proceedings of Congress were thrown out of the House. This was a deadly blow to Congress. It broke the boasted Union. Upon this occasion Clinton first gave the hint of taking up arms. He declared he would not draw his sword against his sovereign but upon the most cogent reasons, but insinuated that the time was nearly come, that the colonies must have recourse to arms, and the sooner the better. He was called to order, apologized for his warmth, and the matter ended.

In April, 1775, the battle of Lexington happened, and a civil war commenced in earnest. In May, 1775, a second Congress met at Philadelphia. Clinton went as a Delegate for Ulster. In this Congress he took an active part, was violent and decisive against Great Britain, he ridiculed all terms of accommodation, condemned all thoughts of reconciliation, and even, in an enthusiastic speech, went so far as to wish a poniard in the heart of George the tyrant of Britain, and would gladly contribute towards a handsome reward to any person who would perform so religious, so glorious, and so patriotic an act. This Congress continued till the

end of the war, though many of its members were at different times changed. Clinton, in 1776, returned home, invested with all his former power, as sole director of all the committees in the County of Ulster, and treated the loyalists in the same barbarous and inhuman manner as before. In this line he continued, persecuting, imprisoning, and to his own emolument, fining, and under the power of Congress laws robbing, the poor Loyalists of their property until the Declaration of Independence. Upon this he was appointed Colonel of the Ulster Militia. This military power, joined to his civil authority, enabled him to carry on his persecutions, and pecuniary impositions, with a higher hand than ever. Soon after the Declaration of Independence, Congress ordered the States to form new Constitutions under the power of the people. New York formed hers. It was perfectly republican, and every officer was elective. To secure an election of persons consisting wholly of rebels, a law was made by which no person was suffered to vote at these elections unless a true, real and noted, Whig, who had abjured the King, taken the "association," and sworn allegiance to Congress. By this act about *two-thirds* of the inhabitants of the colony who were attached to their sovereign and to the British Constitution were deprived of their suffrages. When the elections came on, Clinton was chosen Governor. He now persecuted, robbed, plundered, banished, and imprisoned, the unhappy loyalists at a great rate. His inveteracy, his rancour, and hatred to Great Britain and the Loyalists, he carried so far, that he has been heard to say, "that he had rather roast in hell to all eternity, than consent to a dependence upon Great Britain, or shew mercy to a damned Tory." By the Constitution

of New York no man is to continue Governor more than three years, though matters have been so contrived that Clinton is still Governor, and has been so, for more than ten years. He now lives in New York, and continues his persecutions against the Loyalists notwithstanding the Provisional Articles, and Treaty of Peace, which declare, "that no man shall be injured, "hurt or molested for anything done during the war."

The Marquis De Chastellux in his travels through the rebel colonies says, "I have letters of recommendation to Governor Clinton, of New York. He governs with the utmost vigour and firmness, and is inextorably to the Tories, who he makes tremble, "though they are extremely numerous in the State of "New York."

## CHAPTER XX.

GENERAL NATHANIEL WOODHULL was a native of Suffolk County, in the province of New York. His father was an honest country farmer. The son was also brought up a farmer. When the war, which commenced in 1755, broke out, he entered the provincial service, and served the whole war in the different characters of Captain, Major, Lieutenant-Colonel, and Colonel. He behaved well as an officer, was bold and resolute. He was a rigid Presbyterian, of course a flaming republican. In 1769, he was elected a member to serve in General Assembly for the County of Suffolk. He continued in the House until the commotions in America commenced. In 1775, a Provincial Convention was elected for the Province of New York. Of this Convention he was a member, and was appointed their President, or Chairman. When Congress ordered an Army raised, and the Militia embodied, Woodhull was appointed Brigadier-General, and Commander-in-Chief of all the Militia upon Long Island. When the British Army landed, he was upon his march down the Island to join the rebel army at Brookland. Before he reached Jamaica the battle of Brookland was decided. No possibility remained

now of his joining Washington. He took up his quarters at an inn about two miles east of Jamaica. His Militia, panic struck, left him, and returned home, about forty excepted. A party of Light Horse were sent to Jamaica the evening after the battle, as an escort to some prisoners taken in the action. Receiving information were Woodhull was, they surrounded the house and made him and his party all prisoners. Not the least opposition was made, not a gun fired. They asked for quarter, and it was generously granted. It may, from this state of the case, be naturally asked, how the General came to be so desperately wounded as to die of those wounds a few days afterwards? The fact is shortly this. The General, after his surrender, favoured by the darkness of the night, attempted to make his escape, but being discovered by the sentries while attempting to get over a board fence, he received several strokes from their broad swords, particularly one upon the arm. He was carried on board a Man-of-War and treated with hospitality. The Surgeons advised amputation. To this he would not consent. The wound mortified, and he died in a few days. He bore the character of an honest man, an affectionate husband, a good master, and a kind parent; and I really believe he died in what he thought a good and righteous cause.

GENERAL SULLIVAN is a native of New Hampshire, his father an emigrant from Ireland. The General, while a youth, was a stable boy, then a hostler, then a tavern keeper, then a lawyer, then an Assemblyman, then a Delegate in Congress. He took an active, warm, and decided, part against Great Britain. He was vulgar, and in his conversation coarse. He was a

Delegate also in the second Congress which met at Philadelphia, in May, 1775. This Congress practically declared war against Great Britain, ordered an army raised, and Sullivan was appointed a General. He continued the whole of the war in the military line. He was not very successful. He was taken prisoner upon Long Island in 1776, was defeated in an invasion upon Staten Island, and was obliged to raise the siege of Newport upon Rhode Island, and make a precipitate retreat. His invasion of the Indian Country in 1779, burning their towns, destroying their grain, and cutting down their orchards, in spite of all opposition, was a bold undertaking, well conducted, and attended with success. Sullivan undoubtedly acted from principle. When he commanded the Northern Army at Crown Point and Ticonderoga, he received a letter from a countryman of his, a Mr. Livins, then Chief Justice of Quebec, offering great rewards and high honours if he would deliver up the forts and garrisons to the Crown. He rejected the proposal with scorn, and by an express instantly forwarded the letter to Congress. How different this from the conduct of Arnold, who not only made an offer himself of surrendering the garrisons in the Highlands, but all the troops in that quarter under his command, for a certain fixed sum, stipulated by himself, as a reward for his treason. This shows that Sullivan acted from principle, Arnold from avarice. Sullivan, in his expedition into the Indian Country, though several times attacked upon the march by a number of Indians, refugees, and Tories, under the command of Colonel Butler, of Tryon County, and the famous Mohawk Warrior, Captain Brant, no kind of impression could be made by them upon so firm, so stubborn, and so well con-

structed a phalanx. I have heard Colonel Butler compare it to the driving of a wedge into a stick of wood. Nothing stopped or disturbed its motion. Upon this expedition Sullivan burnt forty towns, some of which contained 130 houses, destroyed 160,000 bushels of corn, took away all their poultry, and cut down all their orchards. These were large, contiguous to their towns, had been long planted, and one of them contained 1,500 trees. Though the Americans complained heavily of the burning and plundering of Fairfield and Norwalk, in the State of Connecticut, in the summer of the same year, as an act of inhumanity in the British, though neither grain nor orchards were destroyed, yet, in their annual Thanksgiving<sup>1</sup> at the latter end of the year, their Ministers did not forget to return thanks to Almighty God for the success which had attended Sullivan's burning, plundering, cruel, marauding, distressing expedition against these Indians, the allies of Britain. So that, what the New England rebels termed barbarity in the British, was deemed a righteous, godly, and Christian-like act when perpetrated by themselves.

COLONEL JAMES HOLMES was the son of an honest, worthy, farmer who lived at North Castle, in the County of Westchester, was a Captain in the Militia and a Justice of the Peace. In the war before the rebellion, this gentleman, then a youth, raised a company of

<sup>1</sup> As I have mentioned an annual "Thanksgiving" in Connecticut, it is necessary to let the reader know that there is also an annual "Fast." Both shall be described. A Thanksgiving—a good breakfast, a superfluous dinner, tea in the afternoon, and a hot supper. A Fast—as much tea and toast as you can drink and eat of a morning, cold ham and punch at twelve, a hot dinner at five, tea and bread and butter at six, and a good supper at eight. Can any man find out the difference between a New England Thanksgiving, and a Fast, unless there is more eaten upon a Fast than at Thanksgiving.

provincials, received a Captain's commission, and served with reputation until the final conquest of Canada in 1760. He then returned to North Castle, and cultivated a small farm left him by his father, who died about that time. Being an honest, worthy, humane, friendly man, he was loved by his neighbours, esteemed by his friends, and regarded by his acquaintances. When the troubles broke out in America and a Provincial Convention met at New York, Holmes was sent as a member for Westchester. He was looked upon with rather a doubtful eye, was suspected of being a loyalist. He was a moderate man, and heartily wished for a reconciliation between Great Britain and her colonies. His real sentiments were shortly put to the test. His ambition, perhaps, prevailed. War was declared, an army ordered to be raised, and Canada invaded. Holmes was offered a regiment. He accepted it, went with Montgomery, was at the siege of St. Johns, at the capture of Montreal, and at the attempt to storm Quebec. The rebels being driven out of Canada, Holmes resigned his regiment, and returned to North Castle. The campaign of 1776, being as favorable to Britain, as prejudicial to rebellion, Holmes thought the war at an end, left the rebel country, took refuge within the British lines, and renewed his oaths of allegiance. He also took a pardon from the Commissioners for restoring peace. He lived within the British lines until 1779, when finding the British affairs growing worse and worse, he privately left Long Island, went into the rebel country, applied to the rebel Governor, offered to abjure his sovereign, and swear allegiance to the States. Clinton, the rebel Governor, treated him with great contempt, refused to receive his submission, called him a deserter from the

cause, and one not to be trusted. The usage, perhaps, was not improper for a person guilty of such tergiversation. He retired to North Castle and there still lives.

## CHAPTER XXI.

COLONEL JOHN BUTLER is the son of a Lieutenant Butler, a native of Ireland, who came to New York in 1711. He was not a far distant relation of the Ormond family. The army then sent out was for the reduction of Canada. It was in the reign of Queen Anne. He was even then a Lieutenant. The expedition failed, a storm in the river St. Lawrence, and the ignorance of the pilots, caused the loss of a great part of the Naval force under the command of Sir Hovenden Walker, and a number of transports in which more than 1,000 men were drowned. Butler exchanged his Lieutenancy from a marching regiment into one of the Independent Companies stationed in the Colony of New York. By making purchases of the Indians, he accumulated, in the course of his life, a large and valuable real estate. One of his purchases in the County of Albany, about seven miles from Johnson Hall, contains above 60,000 acres. It is known by the name of "Butler's Purchase." He was only one of the patentees, though he had a considerable share. Colonel Cosby, then Governor of New York, his two sons William and Henry Cosby, Mr. Freeman of the Island of Jamaica, who married one of his daughters, Lord Augustus Fitzroy,

who married his other daughter, Alexander Cosby, brother to the Governor of New York, then Commandant at Anapolis in Nova Scotia, his two sons William, and Alexander, John Harrison, the Governor's agent in England, and Phillis his wife, with many others of the Governor's friends were interested in the purchase, and Letters patent were granted to each of those concerned severally. Butler settled upon, cultivated, and improved, his part. He had two sons, Walter and the present Colonel, both of whom he also settled here, and gave to each a large farm. This purchase was in the Mohawk country, and the old gentleman, as well as his two sons, had considerable influence with the Six nations. The old gentleman died in 1760, a Lieutenant only. He was nearly ninety, and had been seventy years a Lieutenant, though a man of merit, of honour, of spirit, of resolution, and bravery. The Lieutenant being an Irishman, Mr. William Johnson, afterwards the Colonel, the General, and the Baronet, upon settling in the neighborhood of Butler, warmly attached himself to him and his family. In 1755, Mr. Johnson, then a Militia Colonel, was made a General, and appointed as Commander-in-Chief of an expedition against Crown Point. He procured commissions for the two brothers, Walter and the present Colonel, as Captains in the Indian Corps which attended him upon this service. In the action with the French Army under the Baron Dieskau, upon the banks of Lake George, on the 8th of September in that year, the two brothers signalized themselves at the head of the Indians. Walter Butler, and Farrell Wade, a brother-in-law of the General who was a Captain in the same Corps, the famous old Hendrick, the Mohawk Chief, Sachem, and Politician, were

killed in the battle. The present Colonel escaped unhurt. The General upon this occasion was created a Baronet.

In 1759, Colonel Butler attended Sir William Johnson upon the expedition against Fort Niagara, and was next in command under the Baronet in the Indian Corps. General Pridaux, who commanded the expedition, being killed early in the siege, the command of the army devolved upon Sir William, and that of the Indians, of course, upon Butler. In this command he acted with spirit, resolution, and bravery, was at the head of the Warriors when a French army from Upper Canada attempted to relieve the Garrison, was in the action which commenced upon this occasion, and was foremost in the pursuit which took place upon the defeat of the French. In 1760, he again attended Sir William, as second in command of the Indian Corps that went with Sir Jeffrey Amherst to Montreal, which, being surrendered, and with it all Canada, Sir William, Colonel Butler, and the Indians returned home. Being a steady Loyalist, when the rebellion broke out, he, with Colonel Johnson, Colonel Claus, and several other leading men in that part of the country, went with all the Mohawks and joined the British forces in Canada. He was Deputy-Superintendent (during the war) of Indian affairs, was of great service as an active partisan, for which the rebels attainted his person and confiscated his estate. He now lives in Canada. He had an only son, a youth of spirit, sense, and ability. He was bred to the law. When the rebellion commenced he also entered the army, behaved well, was a Lieutenant in an old regiment, and was killed in a skirmish with the rebels near Johnson Hall in 1781. His name was Walter.

ISAAC SEARS was a native of Connecticut. His father was an oyster catcher, which shellfish he hawked about the country. He brought up his son to the same business, which he followed till about sixteen years of age, when he was bound to the Captain of a New England Coaster. When his time was out, he went to sea as a foremastman. At length he got the place of a Mate of a little sloop. In 1758, he was commissioned as Captain of a small privateer called the "Harlequin," and in consort with another named the "Columbine," went to the Straits of Belleisle, upon the Coast of Labrador. They fell in with a French ship, an attack took place, and the privateers were obliged to sheer off. Sears in this action gained little honour. He was charged by his crew with rank cowardice. He married the daughter of one Jasper Drake, who kept an alehouse for the entertainment of sailors, boatmen, and vagabonds. At the close of the war he was employed by some gentlemen in New York, who had a contract for supplying the troops in Nova Scotia, to carry the provisions, which he did in a small sloop, the property of the contractors. In a few years he, in this trade, accumulated some money, left the seas and settled himself as a shopkeeper. In 1765, the American Stamp Act, passed by the Parliament of Great Britain, was to go into effect. It met a universal opposition throughout the Continent. Mobs were raised and encouraged by gentlemen of the first rank, characters, fortunes, and reputations. Sears now became a great man, he headed the mob in New York, was upon every committee, in every riot, and obtained the name of "King Sears." The Act was repealed, his popularity of course ceased. When the unhappy troubles in America commenced,

Sears took up his old trade, and with the assistance of his mobs, for some time governed the City. Matters however growing serious, he left New York, with his family and property, and settled at New Haven, in Connecticut.

When General Lee came to New York with an army, early in 1776, Sears attended him as Adjutant-General of the Connecticut militia. At the head of a party he now plundered all the King's stores that had been left unplundered. He went with a detachment into the loyal county of Queens, upon Long Island, and compelled the inhabitants to swear not to give the least assistance to Great Britain. This was done with rigor. Every man was to take the oath, or go to jail, and be advertised as an enemy to the liberties of America. He afterwards resigned his commission, left New York, and went to Boston, engaged in privateering, was successful, and made a large fortune. At the conclusion of the rebellion, he returned to New York, hired one of the finest houses in the city, for which he paid a rent of £500 a year, rolled about in his coach and four, but being a person of small abilities and no education, was little noticed by the present leaders. His tune is for mobbing; committees and popular meetings are his delight, his greatest pleasure, his hobby-horse. He was elected a member for New York, in the first Assembly after the evacuation, and was extremely active in the prosecution of the Loyalists, notwithstanding the provisional articles. He soon after broke, left New York and his creditors without the least notice, and went upon a scheming voyage to Canton, in China. What is become of him is unknown, nor is it of any consequence. He was a troublesome fellow, seditious, rebellious, an enemy to

all good government, a low-lived, and a complete blackguard.<sup>1</sup>

John Lamb is a native of New York, the only son of an Anthony Lamb, who was an accomplice of the famous Jack Shepherd. They were tried together for a burglary, convicted, and sentenced. Jack suffered at Tyburn, Anthony, being but a lad, was only transported. He was sent to Virginia, sold, served his time out, travelled to New York, married, and having served some time before his transportation to a mathematical instrument maker, he set up that business, and became a useful member of society. He was the only one of the trade, and being sober and industrious, he made a comfortable subsistence, maintained his family, and even laid up money. He bore the character of an honest, just, upright, man, and as a mechanic was universally esteemed. John was brought up to the same business, but he was ambitious. The humble life of a mechanic suited not his taste. He longed to be a gentleman, left his business, turned merchant, and broke. After this, John was chiefly maintained by his father, and some of his wife's relations. His pride would not suffer him to return to the business of making mathematical instruments. When the Stamp Act was passed by the British Parliament, John took an active part in opposition to it, was a mighty leader, and haranguer, among the "mobility." The Act being repealed, and peace restored, John's popularity ceased. There was nothing left to keep it up. When the late troubles commenced John again rose into consequence; he headed mobs, excited sedition, talked treason, abused the Loyalists, harangued the populace,

<sup>1</sup> I have been since informed that he returned to New York, made a second voyage to Canton, and there died.

and damned the Tories. Upon General Lee's dismantling Fort George, and the Batteries in New York, of their cannon and stores, in the spring of 1775, and removing them into the Fields, John was made Master-General of the ordnance. And dressed in blue and buff, he afterwards joined Montgomery in Canada, was wounded, and taken prisoner, at Quebec. A number of others were also taken at the same place. General Carleton sent all the prisoners to their respective Colonies, taking their paroles not to bear arms against Great Britain, until regularly exchanged. John was a restless spirit, could not bear to be idle, and had little honour. In April, 1777, he was in the attack upon Danbury, and was, notwithstanding his parole, defending Fort Constitution, when taken by General Clinton, in October, 1777. He luckily made his escape. Since the recognition of American Independence by Great Britain, he is made Collector of the Port of New York, with a salary of £1,200 a year. He has also purchased the confiscated estate of John Rapalje, Esq., at Brookland Ferry, worth at least £40,000, and paid for it in army certificates, purchased for about £1,000 in hard money. He has since been an Assemblyman, and an Ambassador from Congress to the Bey of Algiers, but having neither money nor presents from his masters to offer, he failed in his negotiation. He is still Collector of New York.

## CHAPTER XXII.

GEORGE WASHINGTON is a native of Virginia, of a reputable family, and good connections. He has served in the Assembly, and was afterwards a member of his Majesty's Council, for Virginia. Mount Vernon, the place of his residence, he inherits as heir-at-law to a brother who served, and died, on board Admiral Vernon's fleet, in the West Indies, in 1742. In 1753, Mr. Dinwiddie, then Governor of Virginia, sent him as an Ambassador to the Commandant of the French forces, then forming a settlement upon the Ohio, to let him know he was encroaching upon the lands of Great Britain, and ordering him to retire, or compulsory methods should be taken. Washington was treated by the French officers with great hospitality, and the utmost politeness. The Commandant told him the Governor's Message should be sent to the Marquis Du Quesne, then Governor of Canada. That the orders of the Marquis would be a law to him, and he should implicitly obey them. With this answer, Mr. Washington returned. The French not abandoning their project of forming a settlement upon the Ohio, the Government of Virginia undertook to drive them away by force. Three hundred men were raised, and the com-

mand given to Mr. Washington, who was appointed a Provincial Major. This little army being completed, they rendevouzed and encamped at Wills's Creek, upon the frontiers of Virginia. A reconnoitering party, under the Major's own command, fell in with a party from the Ohio, under the sanction of a flag, bound from the Ohio to Virginia, on an embassy from the French Commander there to Governor Dinwiddie. Monsieur Jumonville was the Ambassador. He was to pass through a wilderness of several hundred miles, which many savage and barbarous nations inhabited. An escort was necessary, not only to guard against any attacks of the barbarians, but to procure provisions during the journey. This French gentleman, with his escort, in perfect security as he thought, were sitting down quietly eating their dinners, with the flag hoisted upon a pole, conspicuously flying. This party, thus situated, the Major fell in with. Without the least notice he ordered them fired upon. Monsieur Jumonville and several others were killed upon the spot, and the rest made prisoners. The French made horrid complaints of this act, as an infraction and a violation of the law of nations.<sup>1</sup> The Virginians excused it under pretence that the French were armed, which is not customary when travelling under the sanction of flags. But when the distance through the wilderness, the savage tribes living in those woods, and the necessity of fire-arms to procure provisions upon the route, were considered, it was by all moderate men condemned as an iniquitous act. In August, 1754, Major

<sup>1</sup> Wynne, in his history of the British Empire in America, speaks of this matter thus: "Jumonville and his company were either killed, or made prisoners of, by Washington, in a manner contrary to all the rules of war established among civilized nations."

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Washington marched from Wills's Creek, upon his way to the Ohio. He crossed the Alleghany Mountains, and built a fort at the Little Meadows. The French were soon apprised of his march, and Monsieur De Villiers, the brother-in-law of Jumonville, was sent with a party to meet and attack him. Understanding on the way that Washington had halted at the Little Meadows and built a fort, he went directly there and attacked the fort. The Major soon thought it necessary to capitulate. In one of the articles he acknowledged that he had violated the law of nations, by the assassination of Monsieur Jumonville, when under the protection of a flag. In another he pledged his honour not to bear arms against France for twelve months. This happened in August, 1754. Yet, he fought under the banners of Braddock, upon the Monongahela, in July, 1755. He was afterwards Commander-in-Chief of the American army, which commission he held during the war.

After the peace of 1763, he married the widow of a Mr. Custis, a lady of great property, and settled himself down quietly upon his own estate, where he lived till the late American commotions commenced. He was a delegate from Virginia at the first Congress, in 1774. He took, upon this occasion, a violent and active part against Great Britain. When this Congress was dissolved he returned home, was appointed Chairman of the Committee of the county in which he resided, and enforced the resolutions and recommendations of Congress with a high hand. Some who refused obedience to the Committee, he ordered punished, and others he imprisoned. He even levied taxes upon the inhabitants, and ordered them collected and paid, by dint of his own power, threatening such as should dis-

obey his illegal and arbitrary mandates with being advertised in the public papers as "enemies to America and the rights of mankind." A punishment of this kind, if not death, was certain banishment, the destruction of property, and the ruin of families, of wives, and of innocent children.

When the second Congress met at Philadelphia, in May, 1775, Colonel Washington was again sent as one of the delegates from Virginia. War was now declared against Great Britain, an army ordered to be raised, and Washington was commissioned by Congress as General. He repaired to Boston, where the British army then lay, and with the assistance of a numerous militia completely blockaded the town. By this means the royal troops were so straitened for fresh provisions, that General Howe, who then had the command, evacuated the place and went to Nova Scotia. Washington, with the rebel army, went to New York. General Howe also went there, in June, 1776. Upon Long Island, in August, the two armies met, and Washington was totally defeated. He abandoned Long Island, evacuated New York, and was again defeated in the upper part of that island. He was repulsed at the White Plains, in Westchester County, and absolutely ferreted through New Jersey, nor did he stop till he got to Philadelphia. The British not passing the Delaware, and going into quarters, he collected some troops from the southward, recrossed the Delaware at Trenton, the latter end of December, 1776, surprised and made prisoners of about 600 Hessians, laden with plunder, under the command of a drunken Colonel. He carried his prisoners to Philadelphia, returned to New Jersey, and at Princeton was defeated by Colonel Mawhood, upon which he precipi-

tately retired, and by a forced march through the country, arrived at, and took possession of, the mountains about Morristown. In September, 1777, he was totally defeated at Brandywine. In October following he met with the same fate at Germantown, and in July, 1778, he fared in the same manner at Monmouth, in New Jersey. After this, he retired to inaccessible mountains in the Highlands, on the west side of the Hudson, in the province of New York. In 1781, he passed the river, and a junction was formed between his army and the French army, under Monsieur Rochambeau, from Rhode Island, at the White Plains. The allied army now paraded about the lines at Kingsbridge, to the great terror of the British General in New York; but nothing was done, a little skirmishing between small parties now and then excepted. In September, the allies passed the Hudson, went through the Jerseys, Pennsylvania, Maryland, and entered Virginia, where, being joined by a corps under the Marquis De LaFayette, the militia of the country, and a French army brought from the West Indies, by the Compte De Grasse, under the command of Monsieur de St. Simon, with the assistance of the French fleet, he laid siege to Yorktown and Gloucester, and in about a month compelled Lord Cornwallis, who commanded there, to capitulate upon honourable terms.<sup>1</sup> Washington after this returned to the Highlands, in the province of New York, where he continued until a faction in the British Parliament made or rather patched up, a peace upon the most ignominious terms, ceded

<sup>1</sup> At this time the situation of rebellion was such that Washington, in a letter to De Grasse, declares, "that unless a co-operation could take place between his fleet and the army, everything was over, no peace to be expected, and a return to a dependence upon Great Britain the inevitable consequence."

thirteen colonies to the rebels, with a tract of land not included in any of their grants, comprehending more square acres than half Europe, sacrificed all her loyal subjects by giving away their estates, and recognizing the rebel Acts of Attainders without a term, a condition, or a stipulation in favour of the poor Loyalists. Can Washington be called the conqueror of America ? By no means. America was conquered in the British Parliament. Washington *never* could have conquered it. British Generals *never* did their duty. The friends of the rebel chief say he has virtues. I suppose he has ; I say,

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"Curse on his virtues ! they've undone his country."

## CHAPTER XXIII.

GENERAL CHARLES LEE was a native of Ireland. His father was a Colonel in the British service. The son was bred to the profession of arms. He was a Lieutenant in the 44th, came to America with General Brad-dock, in 1755, and was in the battle at the Mononga-hela. He shortly afterwards got a company, and served the whole of that war in America. He bore the charac-ter of a man of intelligence, but was troublesome, sati-rical, and abusive. He was under more arrests, had more court martials held upon him, and more courts of inquiry into his conduct, than all the officers of the army put together. He was thought by many to be insane, and was known by the name of "Mad Lee." Upon the conquest of Canada he returned to England, and served the remainder of the war in Portugal as a Colonel in that service. The peace being finally settled in 1763, he returned to England. He was of a restless disposition. When the rebellion in Poland broke out, he went to that country and served in the rebel army. This war being ended, Lee had nothing more to do. As soon as he heard of the commotions in America, he embarked for that country, travelled through all the revolted colonies, harangued mobs, published treason-

able pamphlets, cursed the King, the Ministry, and Parliament, endeavouring by every means to widen the breach between the two countries. In this he was too successful. He was avaricious to a degree of meanness.<sup>1</sup> When Congress ordered an army raised, Lee was appointed next in command to Washington. He was, by far, the most experienced General Congress had. He had ever been in the military line, was bold, brave, and intrepid, and Washington always looked upon him with a jealous eye. He served at the blockade of Boston for some time. Was then sent to New York, from whence he went to South Carolina, and successfully defended Sullivan's Island against the attack of Sir Peter Parker. He returned from the southward in the fall of 1776, and was sent to the Northern Army to prevent the irruption of the British army into the Colonies by way of the Lakes. The winter approaching, the British returned to Canada.

Lee, in returning through New Jersey, was taken prisoner, carried to New York, afterward exchanged, and joined the rebel army then in Pennsylvania. When the rebels attacked General Clinton at Monmouth, in July, 1778, Washington charged Lee with a disobedience of orders, and brought him to a court martial. He was found guilty, and by their sentence rendered incapable of serving in the armies of Congress for two years. He retired to Virginia, where he had a

<sup>1</sup> Gordon says, that while at the White Plains, Lee lodged in a small house close to the road by which Washington passed when out a reconnoitering. Returning with his officers, they called in and took a dinner. They were no sooner gone, than Lee told his aids, " You must look me out another place, or I shall have "Washington and all his puppies continually calling upon me, and they will eat "me up." The next day Lee, seeing Washington out upon the same business, and expecting another visit, ordered his servant to write with chalk upon the door in large capitals, " No victuals dressed here to-day." When the company approached and saw the writing, they pushed off with good humor for their own table.

country seat, and lived privately. He died a few years after, so much chagrined at the part he had acted, and so much vexed with rebellion, with Republicans, and Presbyterians, that by his will he ordered his body not to be buried within three miles of a Presbyterian meeting-house, conventicle, or a schism shop.<sup>1</sup>

DONALD CAMPBELL is the son of a Lachlan Campbell, of the Isle of Islay, in North Britain, who, encouraged by a proclamation issued by George Clarke, Esq., in 1737 (who was then Lieutenant-Governor of New York), with the advice of his Majesty's Council, promising 30,000 acres of land adjoining Lake St. Sacrement, now Lake George, to any person who would undertake the immediate settlement of it, came to New York, viewed the land, and liked it much. He was begged by the Indians to settle there. They were struck and delighted with his Highland dress. The grant was promised in a public advertisement, signed by the Lieutenant-Governor himself. It was to be free of all charges, the King's quit rents, and the fees of surveying excepted. The faith of Government thus pledged, Campbell thought himself safe, returned to Scotland, sold his estate there, and at his own expense transported to New York, 83 Protestant families, consisting of 483 men, besides women and children. Private faith and public honour demanded the performance of a promise, so solemnly made, to an undertaking so expensive to himself, and so beneficent to the Colony. It however failed. The Lieutenant-Governor, notwithstanding his promise, together with Cad-

<sup>1</sup> Gordon says he died on the 2d of October, 1782. "His avarice," says he, "had no bounds. He begrudged the expense of a nurse in his last illness, and died in a small dirty room, in a little country tavern, attended by one servant only."

wallader Colden, James Alexander, and Philip Livingston, Esqs., three of the Council, insisted each upon a share in the grant. Campbell, who was a man of spirit, would by no means consent. The letters patent were refused. Campbell applied to the General Assembly. They had no jurisdiction, or power, in matters of this kind. He then applied to the Board of Trade. This he found too expensive. He therefore left his emigrants to themselves,<sup>1</sup> and with the small remains of his shattered fortune purchased a farm in Ulster County, in the Province of New York, built a house, and gave it the name of "Campbell Hall." He was active, loyal, and spirited. When he heard of the rebellion in 1745, he took up his broadsword, went to New York, embarked for England, went to Scotland, served as a volunteer under the Duke of Cumberland, signalized himself at the battle of Culloden, saw the rebellion at an end, and his native country in peace. He then returned to New York, went to Campbell Hall, and shortly after died.

Donald was born at the Hall. He was a youth when his father died. There were several children, the estate not large. Donald was, therefore, apprenticed to a merchant in New York. When his time was out he went several voyages as a supercargo to the West Indies. By this means he made some money. When the war, in 1755, broke out, he was living in New York and doing some little business in a mercantile way. In 1756, Lord John Murray's Highland regiment arrived. Among the officers Donald found

<sup>1</sup> John McDougal, known in New York by the name of "Milkman John," was one of them. He was the father of Alexander, the great incendiary and promoter of the American rebellion. The latter was a General in the rebel service. Upon the peace, he was made Superintendent of the Bank in New York, and died in March, 1786.

several relations. He was young, active, and sprightly. He quitted the business of a merchant, entered as a volunteer in this regiment, and served a campaign or two. Whether he was ever promoted in this regiment I know not, but we find him a Lieutenant in the Royal Americans at Quebec, after its reduction in 1759. Upon the conclusion of the peace in 1763, Donald was reduced to half pay, went to England, and presented a memorial to the Crown setting forth his father's sufferings, loyalty, and ill-usage, and praying a compensation for himself and family.<sup>1</sup> The memorial was referred and recommended to the Governor of New York. General Moncton, then Governor, laid it before his Council, who advised a grant of land. Letters Patent were accordingly issued granting to Donald, as the eldest son, 20,000 acres of land, and to his mother, sisters, and brother 20,000 acres more. This business completed, he returned to England, and pretending a relationship to the Duke of Argyle, Lord Loudon, and other heads of the Campbell family, he was caressed by the Scotch, lived high, kept good company, and frequented all places of diversion. This the half pay of a Lieutenant could not support. He had recourse to his friends, borrowed liberally, spent freely. It was impossible to hold out long. Dining one day with General Murray (who had been Governor of Quebec after its conquest), he was called out and a writ served upon him for a considerable sum.

<sup>1</sup> He had, at this time, a mother, two sisters, and a brother living. George, the brother, had honour, spirit, and loyalty. He was a Lieutenant in an old regiment in America in the war of 1755. He afterwards went to India in a military station. When the rebellion broke out in America, he returned home, went to New York, was a Lieutenant-Colonel in Fanning's Corps. Upon the reduction of Georgia he went there, raised a regiment of horse, served during the war, and now has the half pay of a Lieut.-Colonel.

He mentioned the matter to the company, and pretending an expectation of large remittances from America, the General, and Colonel Skinner, an American of great generosity, humanity, and sensibility (the son of the Rev. William Skinner, of Amboy, in New Jersey, who was of the clan of the McGregors—the Colonel married a daughter of the late Sir Peter Warren, to whose lady he was a first cousin) became his bail. This done, Campbell privately decamped, embarked, and went to New York. Murray and Skinner paid the debt. A power was sent to America, Campbell served and a mortgage given upon all his real estate to secure the debt. Donald continued in New York till the rebellion commenced. Like many others, having little or nothing to lose, and much, perhaps, in case of a revolution, to gain, he entered heartily into the American cause, bellowed out for liberty,<sup>1</sup> abused Great Britain, headed mobs, damned the King, talked sedition, roared treason, cursed the Tories, and insulted them in all companies. For this he expected his reward. When a rebel army was raised, Campbell was not mentioned as an officer. He was chagrined, went to Philadelphia, and presented a memorial to Congress setting forth his merit, his services, and his

<sup>1</sup> This reminds me of a namesake of his, one Campbell, a poor Scotch clergyman in New York, many years ago, who in all companies was ever talking of liberty and property, until taken up one night by an elderly gentleman, who said, "Mr. Campbell, you are always talking of liberty and property. As to property 'you have none, as to liberty you take more than you are entitled to.' This rebuke had the desired effect, Campbell never more troubled the company about 'liberty and property.' This parson made himself conspicuous by marrying, about 1733, without a license or publishing the banns, Lord Augustus Fitz Roy to Miss Cosby, the daughter of Governor Cosby, of New York, who prosecuted him, hove him in jail, and in the end compelled him to leave the province. The present Duke of Grafton and Lord Southampton are the offspring of the above marriage.

prowess. It was not the interest of Congress to disoblige so enthusiastic a man bred to arms, who had been in battles and attended sieges. He was, therefore, appointed deputy-quartermaster in the rebel army. He now took off his regimentals and put on "blue and buff." He went with Montgomery into Canada, was at the siege of St. Johns, at Montreal when it surrendered, and at Quebec. Upon Montgomery's death, and Arnold's being badly wounded, the command devolved upon Campbell. He raised the blockade, retired to Montreal, and left all his cannon, stores, and sick behind him. This offended Congress. His commission was not taken from him, but he was never afterwards employed. They allowed him no pay. His half pay from Great Britain was taken from him. He retired into the country, where he lives as poor as a rat, indigent, neglected, and forlorn. May such a fate attend all traitors!

## CHAPTER XXIV.

FRANCIS LEWIS is a native of Bristol. He came to New York about the year 1746, established a pipe manufactory upon Long Island, broke, gave up his works, and compounded with his creditors. He next entered into partnership with one Annely, a brother-in-law of his, also a native of Bristol, in the mercantile way. In about two years this house also became insolvent, and everything was made over to assignees. Lewis being well known in Bristol, obtained a credit from some merchants there, and established a house in New York of his own, and in 1752, he again became a bankrupt, compromised with his creditors, and obtained a discharge. After this he went two voyages up the Baltic as a supercargo. By this he got some money, settled himself in New York, and kept a lodging-house. In 1755, his wife continuing the business, he went as a sutler upon the expedition against Niagara. Lewis remained at Oswego during the winter, where a large garrison was left. By selling his tobacco, his pipes, his sugar, and his salt, at a most exorbitant price, he extorted a great deal of money from the poor soldiery. In the Spring of 1756, the garrison was taken and carried to Canada,

and from thence sent to England. Lewis was among them. He returned to New York and followed his former business of entertaining lodgers. An old, worn-out Judge of the Admiralty, who lived about ten miles from the City, when in town lodged at Lewis's. This old Judge had a young Dutch wife. In consequence of his lodging at Lewis's, an intimacy took place—an intimacy lucky for Lewis, and happy for the Judge. Lewis spent good part of his time at the Judge's seat. Great Britain and France being at war, a number of Privateers were fitted out from New York, and captures were almost daily sent in for condemnation. The Judge's office of course became very lucrative, his interest and influence great, as at least nine-tenths of the inhabitants were, in some shape or another, concerned in the privateering business, and depended upon him for speedy condemnations, and favourable decisions in disputable matters. Possessed of this influence, and having the whole city, in consequence thereof, at his devotion, he took a step which some people even then whispered, and after the war publicly reprobated, as arbitrary, illegal, and despotic. He appointed Lewis claimant to all the recaptured vessels sent into New York, to the exclusion of the friends, the factors, agents, and correspondents of the original owners. This was a profitable piece of business, the emoluments of which were divided between the Judge and his friend. Numbers of these recaptures were sent in, condemned, and after the salvage money, which never amounted to more than one-third of the value, frequently not more than one-eighth, was paid to the recaptors, the remainder was deposited in the hands of Lewis for the use of the original owners when discovered, and their legal demands could be

proved. Large sums of this money lay in the hands of the Judge and the claimant for many years. Whenever a payment was made, a commission of ten per cent. was charged. It was part of the decree. If fame speaks truth, thousands were neither demanded nor accounted for. It was frequently impossible, upon filing a claim, to ascertain the original owners. John Doe and Richard Roe, John Denn and Richard Fenn, the fictitious gentlemen of the law, supplied the place of the real proprietors, and many a large sum was decreed by the Judge to be paid into the hands of Lewis for the use of the said John Doe and Richard Roe, or of the said John Denn and Richard Fenn, whenever they should appear and prove their property in the recapture. So much was gained. John Doe nor Richard Roe, John Denn nor Richard Fenn, ever appeared, agreeably to the Judge's decree, to claim their property. In consequence of this, when the war ended in 1763, Lewis was one of the most opulent men in New York, carried on an extensive trade, employed a number of workmen, was popular, and had influence in the city. In 1774, when the British Army was in Boston, Lewis dispatched his son-in-law with proposals to General Gage, then the Commander-in-Chief, for supplying the Army with every thing wanted in each respective department, and stipulated the price at which it could be done. The General, however, had made his contracts. Lewis's proposals were of course rejected. A proposal of this kind was treason with the mob at New York. It was therefore concealed as long as possible. It at length took wind. It flew like wildfire. The leaders of the populace called upon him to know the truth of the report. The fact was denied upon honour. Honour never satisfied a

mob, something more was to be done. He appeared in the Fields, and openly in the presence of all the riffraff and low fellows headed by the republican faction, swore, upon the Holy Evangelists of Almighty God, that the report was totally and absolutely false. A Committee was shortly after appointed for the City to correspond with other Committees of the respective Colonies. The people were called together for this purpose in consequence of anonymous advertisements. The Loyal gentlemen made a point to attend. It was held at the exchange. The meeting was numerous. A Committee was appointed. It consisted of fifty members. The Loyalists so contrived matters that above thirty of the members were strict and steady friends to government. A few days after this, Lewis prevailed upon the mob to call another meeting of the town to elect another member, as the Committee, he thought, ought to consist of an odd number. A meeting was called, and Lewis was chosen the member. This made the number fifty-one. Of this Committee, Isaac Low, of seditious, factious, and rebellious memory, was the Chairman. This was done to please the mob. Lewis now became a warm Whig, a sower of sedition, a promoter of faction, and an insulter of such of his Majesty's subjects as dared to avow their Loyalty. Mobbing he encouraged to the utmost. When the second Congress met at Philadelphia, in May, 1775, Lewis was sent as one of the Delegates for New York. This Congress declared war against Great Britain, and invaded the Colony of Quebec. Mr. Lewis signalized himself in this Congress as one of the most violent members. In 1776, Long Island, Staten Island, the Island of New York, a part of Westchester, and all New Jersey, being conquered by

the royal army, Lewis prevailed upon Congress to build six men-of-war upon the Hudson, above the Highlands, and contracted with them to perform the service. This was perhaps the stupidest thing Congress did. It was attended with a heavy expense. The ships could not go to sea as long as the British fleet lay at New York, and above the Highlands they had no enemy to encounter. This was the case when the contract was made; the ships were, however, built, armed, and manned. The contract was a good one, Lewis made money. In 1777, General Clinton took the rebels forts in the Highlands, and Sir James Wallace destroyed the whole of Lewis's rebel navy. He continued in Congress until the end of the war, when he returned to New York. He and his sons having speculated in the purchase of soldiers' certificates, which they purchased at the rate of sixpence for a forty shilling certificate, they bought confiscated estates in the City and State of New York to the value of many thousands of pounds, and paid for them in this kind of trash, which cost them scarcely as many shillings.

## CHAPTER XXV.

SIR WILLIAM JOHNSON, Baronet, was a native of Ireland, a near relation of the late Sir Peter Warren, who prevailed upon him to go to America when a youth, in order to settle, cultivate, and improve a tract of land called Warrensburgh upon the Mohawk River. This part of the province of New York was then a mere wilderness. Upon this place Mr. Johnson established himself, turned trader, bartered and dealt with the Indians. Being an honest man, and a fair trader, he soon gained the affections of the natives. He was the only honest man with whom they had had any connections after the death of their old friend and patron, Peter, or, as they pronounced it, "Queder," Schuyler. From Schuyler's death, which happened about the year 1715, till the settlement of Mr. Johnson in their country, in 1738, they had scarcely met with a man possessed of half a degree of integrity. Their trade had been with Albany. The inhabitants there were all Dutch, and a trading Dutchman will cheat the Devil if he can. They accordingly most abominably defrauded the poor Indians. They had it in their power. The Indians are amazingly fond of strong liquor, which the Albanians gave them in plen-

ty, made them drunk, and then their bargains and contracts were entered into. No wonder the appearance of an honest man in their country was looked upon as a new constellation in that hemisphere. The Indians all resorted to him. He had the whole of their trade. He was loved, caressed, and almost adored by them, and equally cursed, execrated, and damned, by the pious inhabitants of Albany. The reasons were obvious. Under his auspices that part of the country settled fast. To Mr. Johnson the whole were devoted. From the Indians he made large, fair, and honest purchases, which were confirmed by letters patent from the Crown. Upon a tract of his land opposite Warrensburgh, divided only by the river Mohawk, he built a good stone house, which he called "Mount Johnson;" and when the French war commenced in 1743, he fortified it, and it is still known by the name of "Fort Johnson." The inhabitants in this part of the country were now become so numerous as to be formed into a regular militia, and Mr. Johnson was appointed their Colonel. Through his means, care, assiduity, and influence with the inhabitants and Indians, the westernmost parts of the County of Albany were kept in perfect peace and quietness, until the peace of 1748. Colonel Johnson now improved his estate, settled his land, and carried on an extensive trade with the Indians. In 1750 he was appointed one of his Majesty's Council. In 1755 a war broke out between Great Britain and France, and an expedition was projected against Crown Point. Colonel Johnson was appointed the commander and made a Major-General.<sup>1</sup> Many difficulties attended the col-

<sup>1</sup> Wynne, in his History of the British Empire in America, in speaking of this appointment, expresses himself thus: "The General was an Irishman who had

lection and equipment of this army. The Albany Dutchmen were sworn enemies to the General. Every obstruction was thrown in his way. The whole power, the influence, the large connections, and great opulence, of the Livingston family were exerted to render the expedition abortive. Enmity was at the bottom. Patriotism they had not—that is, real patriotism, the love of a man's country, but they had what, during the late rebellion, was called patriotism—a love of power, a love of influence, and a love of money. A Livingston had for a number of years been Secretary of the Commissioners for Indian affairs. Some of them had been constantly employed as Commissioners for the management of Indian matters. They had made fortunes out of the Indians. No wonder they wanted to ruin the General with the Indians, as well as with his King and country. However, the General marched from Albany in August, and built a fort above Saratoga, called Fort Edward to this day. Here he left a garrison, and early in September marched with the remainder of his army to Lake St. Sacrement, which he rechristened by the name of Lake George, and encamped upon its banks in a strong position. The route from hence to Crown Point was chiefly by water. America was now the seat of war. A French army had in the summer arrived at Quebec. It was commanded by an experienced veteran, the Baron Dieskau. He had been brought up in the army, and learned the rudiments of war under the great Marshal Saxe. No sooner did the Baron understand the situation of the Colonies

"long resided on the Mohawk River, and had gained the universal love of both the  
"inhabitants and native Indians, whose language he had learned, whose manners  
"he was perfectly acquainted with, and whose affections he had gained by his jus-  
"tice, generosity, and humane behaviour towards them."

than he formed his plan accordingly. He took 400 of his regulars, 1,000 Canadians, 1,000 Indians, and 500 rangers, and proceeded to Crown Point. Getting intelligence that General Johnson's army was separated, that a part lay at Fort Edward and the rest upon the banks of the Lake, he left Crown Point, passed the Lake, and marched for Fort Edward. His intent was to have taken the fort, which must have obliged the General to have surrendered in a short time for want of provisions. No supplies could in such case be procured, a retreat was impossible, and a surrender was, of course, inevitable. This business done, the Baron's intention was to march to Albany and Schenectady, in which were magazines of all kinds of provisions and stores for the use of Johnson's army, and that under General Shirley upon the Ontario. These places were guarded by a few militia only. There was, indeed, a fort in each, intended as a defence against the savages, neither of which could have resisted an hour. This performed, the army under Shirley must have also surrendered for want of provisions, and the whole country above, and for 30 miles below, Albany, might have been laid waste. It was a noble plan. Luckily for Great Britain, more so for America, it failed. The Baron, upon his march to Fort Edward, got information that the place was strong, well fortified, a large garrison, and all the artillery there; that the General upon the banks of the lake had no artillery; that his camp was not fortified, not a rebourt built, nor an intrenchment made. The Baron was, however, bent upon his own scheme, and insisted upon proceeding to Fort Edward. The Canadians, the Indians, the rangers, all opposed him. They were willing to go to the lake and attack the General, but had no notion

of attacking a fort that was mounted with cannon. The Baron was obliged to acquiesce; he changed his route, and marched towards the lake. Luckily for the General, the heavy cannon had the day before been removed from Fort Edward to the lake. He also luckily got intelligence of the motions of the Baron. He made the best use of his time: he fortified his camp, he made an abatis of large trees in front, and on his right wing. His rear was covered by the lake, and his left by an impenetrable swamp. His cannon were all mounted. They were worked by sailors, under the direction of an able engineer, sent on purpose by General Braddock, who the same year conducted the unfortunate expedition against Fort Du Quesne upon the Ohio. The camp being tolerably fortified the General sent out a party of about 1,000 men to reconnoitre the enemy. This party and the French army soon fell in with each other. The English were obliged to retreat with some considerable loss. They regained their camp with the enemy close at their heels. In this skirmish fell the renowned old Hendrick, the chief Sachem of the Mohawk nation. He was buried with the honours of war, his pall was supported by eight field officers. The Baron marched up to the lines with great intrepidity and began a platoon firing. This being answered by a thundering discharge of cannon, all the Indians, and one-half of the Canadians, left him and fled. The attack continued for about an hour, when the French gave way upon all sides. The Baron was wounded, and taken prisoner, and so was his aid-de-camp, and several other officers, and a number of privates. About 500 were killed. The loss of the English was trifling. The General was wounded, and Colonel Williams, of

the Massachusetts, killed. This action happened on the 8th September, 1755. It saved the General's army, Fort Edward, Albany, Schenectady, General Shirley's army, Oswego, and one-half the province of New York, as much of Connecticut, and more of the Massachusetts, with all the posts upon the Mohawk River. The season was so far advanced that nothing further could be done this campaign. The General built a strong fort upon the lake, called it "William Henry," left a strong garrison in it, returned to Albany in December, and disbanded his army. His Majesty created him a baronet, and the Parliament voted him a present of £5,000 sterling. He was also appointed "Sole Superintendent of Indian Affairs for the Northern District," and Colonel of an Indian regiment in the pay of Great Britain. In 1756 he joined General Webb with his Indians, and regiment of militia, then going to the relief of Oswego, besieged by the French, but the garrison being reduced before they reached the Oneida carrying-place, they returned. In 1757, he marched with his Indians and militia, and joined the British army at Fort Edward, in order to relieve Fort William Henry, then besieged by the French. But the fort being taken, destroyed, and the enemy gone, he returned. In 1758, he, with his Indians, attended General Abercrombie in his unfortunate attack upon Ticonderoga. Upon the British General's defeat, recrossing the lake, and the campaign over, Sir William returned home. In 1759 he went with General Prideaux upon the expedition against Niagara, and was second in command. He led 1,000 Indians into the field. General Prideaux was unluckily and unfortunately killed at the beginning of the siege by a shot from one of his own cohorts as he was viewing the

trenches. Upon his death the command devolved upon Sir William. He continued the siege with vigour, spirit, and resolution. The garrison was strong. It consisted of 600 regulars, besides Indians and militia, was in no want of stores, provisions, nor ammunition. It was commanded by Monsieur Ponshot, a knight of St. Louis, who had learned the art of war in Flanders, under experienced Generals. The French at this time had their hands full in Lower Canada. General Wolf was besieging Quebec, and Admiral Saunders, with his fleet, was in full possession of the River St. Lawrence. General Amherst was entering Canada by the way of Champlain. The English, besides, had a naval force upon the Ontario. No hope of relief was to be expected from that quarter; their dependence was wholly upon Upper Canada. There were in that part of Canada a number of posts commanded by regulars. They had also a well-disciplined force, a number of rangers, and a great body of Indians. Monsieur D'Aubrey, a thoroughbred soldier, a native of France, commanded the whole. No sooner did the Commandant of Niagara get intelligence of the armament destined against him, than he despatched an express to D'Aubrey. Niagara was a garrison of consequence to the French, and D'Aubrey was determined, if possible, to relieve it. He collected all his force. It consisted chiefly of militia, rangers, and Indians, with about 300 regulars. The whole made rather a formidable appearance. With this army D'Aubrey marched for the relief of Niagara. No sooner had he crossed Lake Erie and landed upon the carrying-place, about fourteen miles from the garrison, than Sir William was informed of it by some of his Indian scouts, and their numbers

nearly ascertained. Sir William prepared for their reception. A breastwork of felled trees was cast up about two miles from the besieged fort, upon the road which the enemy must necessarily take to relieve the garrison. Leaving a sufficient number to carry on the siege, Sir William, with the regulars, posted himself at the breastwork, which was lined with field pieces, and some heavy cannon. The Provincials and Indians were concealed in the woods, in such positions as to fall upon the flanks as soon as the action commenced in front. Sir William, from his Indian spies, received intelligence every hour of the motions of the French. The last account was that the enemy would be in sight in a quarter of an hour. The appearance of the enemy justified the truth of the intelligence. They appeared at the time, and marched boldly up the road in front of the breastwork, until they came within twenty yards of it, when they received a most tremendous fire from the cannon, field pieces, and muskets of the English. Numbers fell. The Indians and Provincials gave the war whoop, and attacked both flanks. An ineffectual resistance was made for a few minutes, when the militia and Indians threw down their guns and took to their heels. The whole body of officers, about forty in number, knowing the consequence of an Indian pursuit, with all the regulars, clubbed their fire-locks and surrendered at discretion. No sooner was this done, than the 44th and 48th, the two regiments with General Braddock on the unfortunate 9th of July, 1775, jumped over the breastwork, and joined the Indians and Provincials in the pursuit, the officers repeatedly stimulating the men with the cry of "Remember the Monongahela, my lads!" A most horrid carnage took place. The pursuit continued for

above ten miles. The Indians returned loaded with scalps, the Provincials with plunder. Not a prisoner graced the triumphal return. The 44th and 48th sacrificed to the manes of their brave comrades, murdered, nay butchered in cold blood, upon the banks of the Monongahela a few years before, by these very people who all came from that quarter. The French relieving army being defeated, and all their officers prisoners, Sir William summoned the garrison. It surrendered, and they were prisoners of war. The women and children were sent to Montreal, the officers and privates to New York. Major Farquahar, with a strong garrison, was left to command the fort, and General Johnson, with his Indians, returned home. In a book called the "Field of Mars," the Niagara expedition is thus spoken of: "Upon the death of General Pri-deaux, the command devolved upon Sir William Johnson, who omitted nothing in pursuing the vigorous measures of the late General, and added to them everything his own genius could suggest. Respected by the regular troops, dear to the Provincials, and almost adored by the Indians, possessed of that genius for acquiring popularity amongst all kinds of men, and that versatile disposition which we so seldom see united with disinterestedness and integrity, he employed these talents solely for the benefit of his country. The troops, remembering that it was under him that the first advantage had been obtained, pushed on the siege with the utmost alacrity."

In 1760, Sir William, with 1,000 warriors, attended Sir Jeffrey Amherst to Oswego, across the Ontario, down the river St. Lawrence, and landed upon the Island of Montreal. As no opposition could be made, the Marquis De Vaudreuil surrendered the island, the

city, and the whole country to Great Britain, upon articles of capitulation honourable to France and worthy of Britain. When this business was at an end, Sir William, with the Indians, returned home. The war in America was now at an end. Sir William, therefore, now spent his time in ease, in peace, in quietness, and in tranquillity ; lived hospitably, genteely, and politely ; was remarkably charitable to the poor, indulgent, and kind to all. No wonder he was universally beloved. Even the old inveterate Dutchmen of Albany began to see his merit, and acknowledged him a great, a good, and an honest man. At the end of the war the King granted him 100,000 acres of valuable land as a reward for his services. It is known to this day by the name of "The Royal Grant," the reservation or quit rent, "a pepper-corn only." In 1764 Sir William left Fort Johnson, and went about sixteen miles further north and settled upon one of his tracts of land, then a mere wilderness, cleared the woods, and built him a spacious house of wood, which he called "Johnson Hall." He had few neighbours, the Indians, wild cats, bears, and wolves excepted. Sir William knew no difficulties. No obstacles stood in his way. He fixed upon a level spot of ground about a mile from the hall, cleared the ground, cut down the woods, and in three years a town arose, built at his own expense, and after his own name, called Johnstown. Here he settled mechanics of every kind, two merchants, a physician, a surgeon, and an innkeeper. He built one of the gentlest Episcopal churches in the province, those in the city of New York excepted. It was furnished in a proper style, and decorated with an elegant organ. In this church Sir William, during the remainder of his life, weekly offered up his devotions to his Maker. He

was a strict Episcopalian, a member of the Church of England. In 1772, the county of Albany was divided. Instead of one, it was divided into three, consisting of Albany, Charlotte, and Tryon. Sir William's whole real estate lay in Tryon, and Johnstown was, by an act of Assembly, made the County town. Upon this, Sir William built one of the most elegant and commodious court-houses in the province at his own expense. He also built a strong stone jail, upon a hill about a mile from the town. Johnstown, in 1774, consisted of about 100 houses, built of wood and shingled. The country for many miles round it was occupied by opulent farmers, encouraged, assisted, and protected by Sir William. Being Superintendent of Indian Affairs, and some jealousies being infused into the heads of the Indians by designing people, Sir William directed a meeting at the Hall, consisting of the Sachems of the six nations. They all attended. It was in July, 1774, the weather was hot, the author was present. Sir William opened the council about ten in the morning. He made a long speech, pronounced with all the spirit, activity, and energy of the Indians. He was heard with great attention. When he had ended, he retired to his chamber, drank some wine and water, sat himself down in an elbow-chair, reclined his head against the back of it, and expired without a groan.

After Sir William built Johnson Hall he lived in the style of an old English Baron of former days, with the utmost ease, and the most unbounded hospitality. The Hall was open to all strangers, to all travellers. Strangers and travellers were ever at home when under his roof. Though a tenant of his kept an excellent inn at Johnstown, no strangers nor travellers were suffered to put up there; all were desired to repair to the

Hall, and all were equally and hospitably entertained. As he was Superintendent of Indian Affairs, and had the improvement, the settlement, and cultivation of his estate so much at heart, a part of his time was naturally taken up with business. The mornings he devoted to this service. The Hall was always full. Travellers from all parts of America, from Europe, and from the West Indies, daily resorted to his house, in their respective tours through the country. All met with the same kind of treatment, the most unbounded hospitality. The Hall was a kind of open house. The gentlemen and ladies breakfasted in their respective rooms, and, at their option, had either tea, coffee, or chocolate, or if an old rugged veteran wanted a beef-steak, a mug of ale, a glass of brandy, or some grog, he called for it, and it always was at his service. The freer people made, the more happy was Sir William. After breakfast, while Sir William was about his business, his guests entertained themselves as they pleased. Some rode out, some went out with guns, some with fishing-tackle, some sauntered about the town, some played cards, some backgammon, some billiards, some pennies, and some even at nine-pins. Thus was each day spent until the hour of four, when the bell punctually rang for dinner, and all assembled. He had besides his own family, seldom less than ten, sometimes thirty. All were welcome. All sat down together. All was good cheer, mirth, and festivity. Sometimes seven, eight, or ten, of the Indian Sachems joined the festive board. His dinners were plentiful. They consisted, however, of the produce of his estate, or what was procured from the woods and rivers, such as venison, bear, and fish of every kind, with wild turkeys, partridges, grouse, and quails in abundance. No jellies,

creams, ragouts, or sillabubs graced his table. His liquors were Madeira, ale, strong beer, cider, and punch. Each guest chose what he liked, and drank as he pleased. The company, or at least a part of them, seldom broke up before three in the morning. Every one, however, Sir William included, retired when he pleased. There was no restraint.

Sir William left three legitimate children by his wife, an amiable woman, who died early in life : two daughters, one of whom married Colonel Guy Johnson, the other Colonel Claus, both of the army ; the other a son, the present Sir John Johnson, who inherits not only his father's title, but his virtue, his honour, his justice, and his hospitality, as he did a large part of his amazing real estate, which he possessed until the American rebellion, when, taking an active part in the cause of his Sovereign, the Legislature of New York attainted his person, and confiscated his estate. Sir William, after the death of his wife, never thought of a second marriage. He was still a young man, vigorous, an Hibernian, and of a strong and rugged constitution, he, therefore, lived loosely with Indian women, and had numerous illegitimate children within the six nations. Tired, at length, of this kind of life, he fixed upon a handsome, sensible, judicious, and political, young lady of the blood royal of the Mohawks. He took her to the Hall, and lived with her in all the intimacy of the most conjugal affection, though he never married her. She had great art, and great interest in the six nations. She loved Sir William to adoration, and through her means he was always enabled to gain the most authentic intelligence, and to counteract every scheme undertaken by his enemies to set up the Indians against him, to form parties among themselves,

or to detach them from their loyalty to Great Britain. Sir William had several children by this Indian Princess. She was Mary Brant, full sister to Captain Brant, the famous British partizan during the American war. They were all born at the Hall. Sir William provided for the mother and all her children handsomely by his will. Peter Warren, the eldest, was an officer in the British army, and died in 1777, upon his passage from New York to Philadelphia. Mary Brant was known by the title of "Indian Lady Johnson," to distinguish her from Sir John's lady. She went to Canada, upon the breaking out of the war, as all her relations did, and died there many years afterwards. She had 2,000 acres of land given her by Sir William in the Royal grant. The rebels have gone so far as to attaint her, and take away her estate, because she was the mistress of Sir William.

## CHAPTER XXVI.

COLONEL JOHN HARRIS CRUGER has been frequently mentioned in these pages. It will be but common justice to so amiable, so worthy, and so valiant, a character, to give an extract from Roderick McKenzie's Strictures upon Colonel Tarleton's History of the Southern War, relating his most gallant and successful defence of Fort Ninety-Six.

Lord Rawdon, who commanded at Camden, was obliged to abandon it in 1781, and retire to Charleston. Upon this occasion his lordship despatched repeated expresses to Colonel Cruger, who commanded at Ninety-Six, to withdraw his garrison, join that of Augusta upon the frontiers of Georgia, take the command, and act as occasion might require. None of these orders reached Ninety-Six. They were ever intercepted by the rebels. The Colonel, of course, remained ignorant of his lordship's situation. The first advice he got was from an American officer who had been taken prisoner. Lieutenant-Colonel Cruger being thus left to himself, concluded that a large corps, if not the whole American rebel army under General Greene, would attack him. He therefore began to put the works in a proper state of defence. The

houses were wood, and contained within a stockade. The Colonel set the whole garrison to work in order to throw up a bank, parapet high, around the stockade, and to strengthen it with an abatis. Upon the left was a ravine, and a rivulet which supplied the place with water. The prison was fortified, and commanded the ravine on one side, a stockade covered it on the other. The principal work consisted of sixteen salient and re-entering angles with a dry ditch, frise, and abatis, called "The Star." The industry of the garrison, encouraged by their Colonel, erected block-houses in the village, and made caponiers, by which the works communicated with each other. They also threw up traverses to prevent the execution of shells, and ricochet shot. The garrison consisted of 150 of De Lancey's first battalion, and 200 of the New Jersey volunteers. These troops were well disciplined, had served the whole war, been in actual service, and as good soldiers as any in the British army. There were also 200 loyal militia in the garrison under Colonel King. Colonel Cruger, actuated by motives of humanity, as well as policy, advised the latter to quit the garrison and retreat, either to Charleston or Georgia, for he apprehended, in case of a long siege, their number might occasion a want of provisions, and he well knew that no capitulation in their favour could be depended upon. But these Loyalists, though fighting with halters about their necks, were not to be dismayed. They made a point of remaining with the garrison and abiding its fate. Lieutenant-Colonel Cruger made every proper disposition, and took every judicious measure necessary for defending the place. He had but few cannon, and the garrison was in want of ammunition. When the enemy appeared, on the

21st May, 1781, the works were scarcely finished. The rebel army under General Greene consisted of 4,000 men, and a respectable park of field artillery. They encamped in a wood within cannon shot of the place.Flushed with success in having reduced a number of British posts, they despised the garrison of Ninety-Six. In the night, between the 21st and 22d, they threw up two works within seventy paces of the fort. The rebel General did not even condescend to summon the place. By eleven o'clock in the morning of the 22d of May, the works nearest the Americans were completed, and mounted with guns to fire en barbet. These, with the musketry, played on the enemy's works the preceding night, under cover of which thirty men marched out, entered the two works constructed by the enemy, and put every man to the bayonet. These were followed by a party of King's militia, who demolished the works, and brought off all the intrenching tools. General Greene put his whole army in motion in order to support these works, but the business was done before he could effect his design. This handful of brave men retired into the garrison without any loss except the officer who led them, Lieutenant Roney, of De Lancey's who was mortally wounded, and died the following night, universally lamented. On the night of the 23d, the rebels again broke ground at the distance of 400 paces from the place, behind a ravine. Here they began two saps, erected block batteries to cover them, and appointed two brigades for their support. Sorties of small parties were made during the night to interrupt the enemy and retard their approaches. These were occasionally continued during the whole siege. Notwithstanding which, by incessant labour, and the numbers employed,

the besiegers completed their second parallel by the 3d of June. They now, for the first time, beat the chamade, and sent in a flag summoning the garrison to surrender, declaring they had everything to expect from their generosity, and to fear from their resentment; making the Commander personally responsible for a fruitless resistance, and demanding an immediate and unconditional surrender to the army of the United States of America; protesting that this summons should not be repeated, nor any flag received, unless it contained proposals for a capitulation. Colonel Cruger answered that Ninety-Six was committed to his charge, and it was his duty, as well as inclination, to defend it to the last extremity. He added that the threats, or promises, of General Greene were equally indifferent to him. The truce, therefore, ceased. The enemy opened four batteries, and commenced a cross-fire which enfiladed some of the works. They continued this cannonade for several days, at the same time pushing a sap, and erecting batteries. One of them, made of fascines, at the distance of only thirty-five paces from the abatis was forty feet high. Upon this a number of riflemen were placed, who, as they overlooked the British works did great execution. The garrison crowned their parapet with sand bags. Apertures were left, through which the Militia fired their rifles with good effect. African arrows were thrown by the besiegers to set fire to the British Barracks.<sup>1</sup>

<sup>1</sup> These arrows were fitted to the bore of muskets from which they were discharged—they were entwined with flax, dipped in combustibles, and lighted, and armed at the end with a barbed spear. The commanding officer at Fort Motte was obliged to surrender, after defending the garrison with great gallantry, his Barracks being set on fire by these arrows. Had the British practised this, it would have been called “inhumanity” and “contrary to the practice of civilized nations.”

Colonel Cruger counteracted this design. He ordered the buildings to be unroofed, an order, which though it exposed both the officers and men to the pernicious effects of the night air, was cheerfully complied with, and obeyed with an alacrity, that nothing but their confidence in him could inspire. On the 8th of June the garrison of fort Augusta was marched by, which had been taken by a rebel Colonel Lee, after a gallant defence made by Colonel Brown, the British Commandant. Lee enjoyed the gratification of a little mind. He exhibited them before Ninety-six with an English standard reversed, drums beating, and fifes playing, to ridicule their situation. This resource had a different effect from what the rebels expected. The soldiers were soon convinced that death was preferable to captivity with such an enemy. Lee, having enjoyed his triumph, sat down with his corps in order to reduce the stockade on the left of the British garrison, which preserved a communication with the water. In the evening of the 9th of June, two sallies with strong parties were made. One of these entered the rebel trenches, and took a battery of four guns. Here they discovered the mouth of a mine designed to be carried under a curtain of the fort, upon the springing of which the breach was to be entered by the rebel army sword in hand. The other party fell in with the covering party of the besiegers. They bayoneted a number of them, and brought in a prisoner, the officer who commanded them. The loss of the British upon this occasion was trifling, that of the rebels considerable. Colonel Lee continued his approaches to the stockade, before which his corps suffered considerably. On the 12th of June, he ordered a Sergeant and six men, at eleven in the morning, to advance and set fire to the

abatis of the work which he had invested. They were all killed. He now redoubled his efforts, and mounted a number of cannon, by which he enfiladed this work by a triangular fire, and by the 17th of June rendered it untenable. It was evacuated without loss, and taken possession of by the enemy. The sufferings of the garrison were now extreme. With great labour a well was dug in the fort, but no water could be got. The only means of procuring water left to the garrison in a torrid climate, in the month of June, was to send out naked negroes in the night, who brought in a scanty supply from within pistol shot of the American pickets, their bodies not being distinguishable in the night from the dead logs with which the place abounded. Far from despondence Colonel Cruger encouraged the troops with the hope of relief, and that before the rebels could possibly reach the ditch. From the treatment of their fellow soldiers captured at Augusta, he painted to them in the strongest colours the mortifying consequences of a surrender. But if they continued their defence, he had no doubt of their having the honours of brightening the future prospects of the royal army in that quarter. While Colonel Cruger was using these endeavours, an American Loyalist, in open day, under a constant fire of the enemy, rode through their pickets, and delivered to Colonel Cruger a verbal message from Lord Rawdon, "that he had passed Orangeburgh, and was in full march "to raise the siege." The name of Rawdon inflamed every breast with additional vigor. They declared they would wait patiently for the assailants and meet them even in the ditch. We come now to the transactions of the 18th. On the morning of this day the rebels completed their third parallel, they turned the abatis, drew

out the pickets, and brought forward two trenches within six feet of the ditch. General Greene, well informed of the advance of Lord Rawdon, and knowing that the garrison was equally apprized of it, determined upon a general assault, which he commenced at noon.

Their forlorn hopes in two divisions made a lodgment in the ditch, and were followed by strong parties with grappling hooks to pull down the sand bags, and tools to reduce the parapet. The riflemen upon their elevated battery picked off every British soldier that appeared, while the Virginian and Maryland lines fired by platoons from their trenches. The attack was continued with warmth for some time, but the main body of the rebels could not be brought forward to the assault. They, however, supported the parties in the ditch by an incessant fire from the lines. The garrison at length became impatient, two parties under Captain Campbell of the Jersey Volunteers, and Captain French of De Lancey's, issued from the sally port, entered the ditch, divided their men and advanced, pushing their bayonets till they met each other. This was unexpected by the rebels. General Greene, from one of his advance batteries, beheld the whole with astonishment and surprise. The two parties consisted of but thirty men each. Yet they charged and carried every thing before them though exposed to the fire of a whole army. The rebels covered their shame in their trenches, nor was it till the next day that they asked permission to bury their dead. General Greene raised the siege on the 19th, and on the 21st the army under Lord Rawdon made its appearance. His Lordship pursued the enemy, but they had so much the start, and their flight so precipitate, as to leave no possibility of being overtaken.

The hardships under which this garrison laboured were extremely severe. The defence of a place so weak and ill-provided, for upwards of 30 days, with only 350 provincials, and 200 Militia, against an army well appointed, in high spirits, and in possession of every advantage, was not to be effected without the utmost patience, vigilance, and exertion. They had a confidence in Colonel Cruger, they knew his spirit, his resolution, and his perseverance. He was hospitable and kind, the men loved him, the officers esteemed him and were determined to defend the garrison to the last extremity for his sake. Their provisions were bad, and water procured with the utmost difficulty. When General Greene first laid siege to Ninety-six his army consisted of 4,000 men, by the juncture of Lee, 500 were added. Lord Rawdon ordered all the works demolished, withdrew the garrison, and returned to Charleston. The garrison had only one Lieutenant, three Sergeants, and 23 rank and file killed. The rebels acknowledged the loss of a Colonel, three Captains, five Lieutenants and 157 privates killed, exclusive of the loss sustained by the Militia, which the rebel Generals made it a rule never to include in their returns. On this occasion they bore the proportion of three to one to the Continentals; their loss, therefore, must have been very considerable in this memorable siege.

I have already mentioned in this work that Mrs. Cruger, the Colonel's wife, was Anne, the eldest daughter of General De Lancey. That she was at her father's house at Bloomingdale, upon York Island, when it was attacked, broken open, robbed, and burnt, by a party of rebels, in November, 1777; in what manner she made her escape; in what a dress, and

in what a situation, and under what circumstances, she travelled above seven miles in bad roads, in cold weather, an inclement season, and in a strong frost, until discovered and taken in, cherished, and hospitably entertained, by a loyal innkeeper. In October, 1778, Colonel Cruger went with his battalion upon the expedition against Georgia, which being conquered, Mrs. Cruger, in October, 1779, left New York, embarked on board a transport bound to Savannah, in order to join her husband. Upon the passage the fleet was overtaken with a most tremendous storm. The whole were separated. The ship in which Mrs. Cruger was suffered roughly. She was old, leaky, and crazy; the Captain, the Mate, and the sailors gave her up, and themselves, as lost. She, however, weathered the storm, and in two days afterwards was taken by a man-of-war under the command of the Compte D'Estaing, who took Mrs. Cruger on board his own ship, and treated her with every kind of politeness. The next day the transport on which she had been on board went to the bottom. She was on board the man-of-war during the siege and storm of Savannah by the French and the rebels. She heard every gun that was fired. She knew her husband was in the city. What must have been her feelings, her thoughts, her agitations, upon this trying occasion the reader may easily conjecture. D'Estaing and Lincoln being defeated, the siege was raised. The former repaired on board his ships, the latter returned to South Carolina. Before D'Estaing left the coast (though not remarkable for honour, generosity, or even humanity), he sent Mrs. Cruger on shore under the sanction of a flag, with all her stores, clothes, and, indeed, every identical thing she had.

In the spring of 1780, General Clinton laid siege to Charleston in South Carolina. Colonel Cruger, with his battalion, was at the siege. Mrs. Cruger in the mean time remained at Savannah. The siege over, and Charleston taken, Mrs. Cruger left Savannah and went to Charleston, where she continued until Colonel Cruger was appointed commandant of Ninety-six. With him she went, lived in the garrison, fared as the people did, was beloved by the privates, and caressed, esteemed, and almost adored, by the officers, for her kindness and hospitalities upon all occasions.

When the rebel General Greene was approaching Ninety-six, the Colonel removed her to the house of a loyal Presbyterian parson, about a mile from the garrison. The siege continued above thirty days. She heard every gun that was fired. Her husband was the commandant. What must have been the anxiety of her mind during this long siege, I leave the public to judge.

At the battle of the Etways, or Eutaw, she had nearly been in the action. The Colonel commanded one wing of the British, and she had but just time to leave the army before the battle commenced, and take refuge in the house of a Loyalist, about half a mile from the field. Here again she heard every cannon, every platoon, every musket, that was fired. She knew her husband was in the midst of it. What must have been her fears for a husband that she dearly loved, and of whom she was doatingly fond. The sufferings, the fears, and anxiety of Lady Harriet Ackland, who attended her husband in the expedition from Canada, in 1777, and so pathetically described by the masterly pen of General Burgoyne, cannot even be put in comparison with those of Mrs. Cruger, with this

difference only, Lady Harriet had her husband wounded, and that mortally, and he subsequently died of his wounds. Colonel Cruger was never even wounded. Lady Harriet met with no difficulties, nor did she ever suffer in mind or body, until the Northern Army reached, and were defeated at, Saratoga. They were then in continuance not more than two months. On the contrary, Mrs. Cruger's were a continuance of difficulties, anxiety, and disturbance of mind, for a number of years. She, however, survived the whole. When South Carolina was evacuated she went with her husband to New York. Upon the evacuation of New York they came to England, and now live peaceably, happily, and contentedly at Beverly in Yorkshire, esteemed by the people, the gentry, and the nobility.

## **EDITOR'S NOTES**

**TO THE**

**SECOND VOLUME**

**OF**

**JONES'S HISTORY OF NEW YORK.**



## NOTE I.

### THE PRESBYTERIAN CHURCH IN NEW YORK—ITS ORIGIN— ITS CONTENTIOUS EXISTENCE—DR. JOHN RODGERS— THE POLITICAL EFFECT OF PRESBYTERIANISM IN THE COLONIES.

*Vol. II., pp. 2-8.*

THE very extraordinary plan of the British Lieutenant-Governor, and Chief-Judge, Andrew Elliott, and William Smith, through their influence with Sir Henry Clinton, to effect the recall of the leading Presbyterian clergyman of the city, who had gone to the Americans, and open "the Brick Church" for his ministrations in 1780—in the middle of the war—can only be explained by their personal relations, especially those of Smith, with prominent persons on the American side. Their duty as British officials, and good faith to their sovereign, would, of course, have forbidden such a step. Both were leading men in the meeting, as it was then called, before the war, and it is barely possible that they may have had some idea of creating a division among the New York leaders of the Americans, who were chiefly Presbyterians or other opponents of the Church of England, but it is not very probable. The origin, and pre-revolutionary existence, in New York of the Presbyterian Meeting, as then called, or church, as now called, is remarkable.

Presbyterianism, the system of religion based on the parity of ministers and the principles of John Calvin, professed in Scotland, Ireland, and England, was unknown in New York for more than a century after its discovery and settlement by the Dutch. It was entirely separate and distinct from the Church of Holland, which had a liturgy, and taught a system of a very different character, founded on the Synod of Dort

and the Synod of North Holland, with which Presbyterianism had nothing in common except ministerial parity. Both churches were not only distinct, but even antagonistic to each other in colony times, and it was not till October, 1785, after the war, that the first attempt was made to establish "a correspondence" between the two, and then it came from the Dutch.<sup>1</sup> Not till 1716, when Dr. John Nicoll,<sup>2</sup> Patrick McKnight, Gilbert Livingston, Thomas Smith, and a few others, conceived the plan of forming themselves into a regular Presbyterian church, and calling a stated pastor,<sup>3</sup> was it introduced. "They immediately took measures for that purpose, and in the autumn of the same year gave a call to the Rev. James Anderson, a native of Scotland, then residing in the town of Newcastle, in Delaware, to be their minister."<sup>4</sup> He accepted, removed to New York in October, 1716, and preached to the persons above named in the City Hall, the use of which the city authorities freely granted for that purpose.<sup>5</sup> Such was the beginning of Presbyterianism in New York. A few persons had previously had occasional prayer-meetings in each other's houses, and in 1706-7 two clergymen, the Rev. Francis Makemie, of Virginia, and the Rev. John Hampton, of Maryland, on their way to New England, were the first Presbyterian ministers who ever set their feet on the island of Manhattan. Their coming, what they did, and the circumstances of the preaching of the first Presbyterian sermon in New York, thus appear in an official dispatch from the Governor, Lord Cornbury, to the Lords of Trade and Plantations :

"To the Right Hon<sup>ble</sup> the Lords Commiss<sup>n</sup> for Trade and Plantations.

"My Lords,

"I trouble your Lord<sup>ps</sup> with these lines to acquaint you that on the 17th January 1708 a man of this town one Jackson came to acquaint me that two Ministers were come to town ;

<sup>1</sup> Gunn's Life of Dr. Livingston, page 280.

<sup>2</sup> Not of the family of Sir Richard and Matthias Nicoll, who were Englishmen and Churchmen, but a Scotchman from Edinburgh, a physician.

<sup>3</sup> Miller's Life of Rodgers, ed. of 1840, p. 95.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

one from Virginia and one from Maryland, and that they desired to know when they might speak with me ; I being willing to shew what civility I could to men of that character, ordered my man to tell Jackson, that they should be welcome to dine with me. They came, and then I found by the answers they gave to the questions I asked them, that one whose name is Francis Mackensie,<sup>1</sup> is a Presbyterian Preacher settled in Virginia ; the other whose name is John Hampton is a young Presbyterian Minister lately come to settle in Maryland ; They dined with me and talked of indifferent things ; They pretended they were going towards Boston ; they did not say one syllable to me of preaching here, nor did not ask leave to do it ; They applied themselves to the Dutch Minister for leave to preach in the Dutch church in this town, who told them he was very willing provided they could get my consent ; They never came to me for it ; They went likewise to the Elders of the French Church, they gave them the same answer the Dutch had ; all this while they never applied to me for leave, nor did they offer to qualify themselves as the Law directs ; but on the Monday following I was informed that Mackensie had preached the day before at the house of one Jackson, a Shoemaker in this town, and that Hampton had preached on Long Island, and that Mackensie after having preached here on Sunday was gone over to Long Island with intent to preach in all the towns in that Island, having spread a Report thereto that they had a Commission from the Queen to preach all along this continent."<sup>2</sup>

In consequence of this course of action they were arrested, taken before the grand jury, and an indictment found against Makemie (Hampton being allowed to go free, one case being deemed sufficient to raise the question) for violating the law of the land by "preaching in this city without qualifying himself as the act of Toleration directs."<sup>3</sup> It is thus seen that the charge against Makemie was not "for preaching the gospel," as is commonly stated by Presbyterian writers, but a violation of the law.

<sup>1</sup> So spelled in the printed dispatch, but Makemie is the name meant.

<sup>2</sup> Col. Hist. N. Y., Vol. IV., p. 1187.

<sup>3</sup> Ibid., p. 1187.

A political cause was then at the bottom of all such proceedings in the British dominions. The Presbyterians, especially those of Scotland, were chiefly Jacobites, and the governments of William and Mary, Anne, and the earlier Georges, ever watched closely the friends of the exiled family of James II., being determined that they should never regain power.<sup>1</sup> This should be borne in mind in considering Britain's history at this period, and especially that of her province of New York. The Toleration Act was claimed to extend to the Colonies, and Makemie had taken a license under it from the Governor of Virginia, by virtue of which he preached in Virginia. The trial caused some excitement at the time, and resulted in an acquittal.

The account of Makemie's affair and Cornbury's action, given in Smith's History of New York, Miller's Life of Rodgers, and Presbyterian writers generally, are partisan, very inaccurate, and not borne out by the official documents. Cornbury not only *did not* prohibit his preaching, but, in fact, did not know of it till the next day after he had preached. And his entire subsequent action was not an attempt "to prevent him from preaching," but to enforce a law of many years' existence. Had Makemie asked, he could have preached in either the Dutch or the French churches. The sermon was preached on the 19th of January, 1706-7, and was published in Boston the next March, with a dedication "To the small Congregation who heard the following Sermon."<sup>2</sup> The trial itself was also published in full.

"In 1718 the four gentlemen above named purchased a

<sup>1</sup> This Jacobite feeling continued to the end of the century. The Rev. Dr. John Witherspoon, who signed the Declaration of Independence as a delegate in Congress from New Jersey—the Presbyterian clergyman who sat in that body, and a lineal descendant of John Knox,—joined the Pretender as commander of a militia company, was taken prisoner at Falkirk, and confined in prison till after the battle of Culloden. He preached subsequently at Paisley, from whence he was called to be President of Princeton College in 1768, at the age of forty-six, only eight years before his election to the Congress of 1776. His devotion to "the principles of the Revolution" was therefore of short and rapid growth, excited by a natural and national antipathy to the House of Hanover.

<sup>2</sup> It is reprinted in the Collections of the New York Historical Society for 1870, pp. 409-453, and is a good "gospel sermon," without political allusions.

piece of ground on the north side of Wall Street near Broadway, on which, in the year 1719, they erected the first Presbyterian church that was founded in the city of New York."<sup>1</sup> The meeting, however, split from internal dissensions three years after, and the disaffected, under the lead of William Smith, of Newport-Pagnell, the first ancestor in New York of the Smith family so fully described by the author, went off, founded a new congregation, and called the afterward-famous Jonathan Edwards, then a youth of not quite nineteen years; but from some difficulties he resigned after about eight months' preaching, and returned to his father at Windsor. The congregation, after his refusal of a request to return, finally went back and united with the original body. Mr. Anderson resigned, on account of dissatisfaction in the congregation, in 1726, and was succeeded in 1727 by Ebenezer Pemberton, who, subsequently to this call, was ordained in Boston, August 9, 1726, to enable him to accept it. "The congregation, though gradually increasing, continued very small until the year 1739." Whitefield's preaching in 1740 added to its numbers, and in 1748 they had so increased as to cause an enlargement of the meeting-house of about one-third. In 1750 the Rev. Alexander Cumming was called as "a colleague for Mr. Pemberton." He was an old-fashioned Scotch Presbyterian in theology, though born in New Jersey. During Pemberton's rule, "under the name of Presbyterianism, the Congregational system was really adopted and maintained. This circumstance gave great dissatisfaction to the friends of genuine, consistent Presbyterianism." The latter tried, but in vain, to introduce ruling elders, as the trustees of the temporalities interfered in spiritual matters. In 1752 the "dissatisfaction" was much increased by an attempt to introduce a new version of the Psalms. "Until this time Rouse's, or, as it is commonly called, the 'old Scotch version,' had been in constant use in public worship. The greater part of those who had been accustomed to this version desired to retain it. Those who wished for a change were not agreed among themselves.

<sup>1</sup> Miller's Life of Rodgers, p. 96.

A few leading individuals of this party were desirous of adopting the version of Tate and Brady; but a great majority were very decisive and zealous in their preference for Dr. Watts's version." In this controversy the trustees took the lead violently. "Indeed, there appears to have been a degree of animosity and violence on all sides which could by no means be justified." In point of fact it was as personal, violent, and disgraceful as the famous "*Cætus*" and "*Conferentie*" contest in the Dutch Church, described in Note VIII. to the first volume of this history. The Watts party succeeded, and their version was introduced. The quarrel, however, continued. The strict Presbyterians applied to the Presbytery and Synod to allay the heat. "But the spirit of contention had become too inveterate to be speedily and effectually removed. Animosities though allayed were not extinguished. The want of prudence and of a spirit of forbearance and conciliation was manifested in a lamentable degree by both parties." In 1753 the "old version," or strict Presbyterians, complained of the two pastors to the Presbytery as favoring their opponents; whereupon Pemberton and Cummings requested the Synod to dismiss them, and both finally left the church. The congregation, with the concurrence of the Presbytery, then called the Rev. Joseph Bellamy, of Connecticut, but he declined. "The principal fomenters of divisions" then sent a second call to Mr. Bellamy, but he not finding "unanimity in the call" declined again on the 18th of July, 1754. The following November Mr. Rodgers, not "Rogers," as the author spells it, was called, who also refused to come. The Rev. David McGregor, of New Hampshire, was next called in January, 1755, but in the succeeding May, "Mr. McGregor, considering the state of the church in New York as highly unfavourable both to the comfort and usefulness of a minister, felt himself constrained to give an answer in the negative." Six months thereafter, in July, 1755, a call was made out for the Rev. David Bostwick, of Jamaica, L. I., but it was April, 1756, before it was put into his hands, when he, "having declared himself wholly at a loss whether to accept or reject," a committee of the Synod decided in favor of his

removal to New York. The strict Presbyterians were not satisfied with this result, and a second split took place. They left the old meeting, formed a separate congregation, and called a Scotch Seceding pastor of that branch of the Secession of Scotland called Antiburghers—the Rev. John Mason, D.D.—who accepted, and arrived in New York in June, 1761, finding his congregation “small and feeble to a discouraging degree.” This successful secession, however, produced comparative quiet in the original congregation. Mr. Bostwick died in November, 1763, and was succeeded by the Rev. Joseph Treat, who had been called as his colleague in October, 1762. In the spring of 1764 the Rev. John Murray, from the North of Ireland, was called as a colleague to Mr. Treat, but “the want of unanimity, together with some other considerations of a personal nature, induced Mr. Murray to reject the call.”

The Rev. John Rodgers, the clergyman mentioned in the text, a native of Boston, born there August 5, 1727, of parents who came from Londonderry, Ireland, then settled at St. George's, Delaware, was next called as Mr. Treat's colleague, in January, 1765, and shortly after he was also called to Charleston, S. C. The famous Whitefield was visiting him at the time, and Mr. Rodgers asked him to decide the question. His decision was that Rodgers should leave St. George's, but he would not say whether he should go to New York or Charleston. Rodgers then left the decision to the Synod, which, after a hearing and discussion for three days, decided in favor of the former, and on the 4th of October, 1765, Mr. Rodgers was installed in New York. The next year he started a plan for building “The Brick Church,” which was successfully carried out, and on January 1, 1768, he preached the first sermon in the new building. He threw himself violently into the anti-college and anti-bishop agitations of the period preceding the Revolution, in which, under the guise of contending for religious freedom, the Presbyterian party contended for political superiority, all the time proclaiming their loyalty to the crown, and even as late as 1775 petitioning the King, as his loyal subjects, for a charter of incorporation.<sup>1</sup> In 1776

<sup>1</sup> Dr. Rodgers in 1775 regularly on Sundays “prayed for our rightful Sovereign Lord King George the Third”—Moore's Diary of the Revolution, Vol. I., p. 10.

he accepted a chaplaincy in the American army, but only served that summer. He and Mr. Treat left New York in that year. Immediately after the evacuation, in November, 1783, Dr. Rodgers returned, but Mr. Treat did not till the summer of the next year. On the 1st of July, 1784, the congregation curtly dismissed the latter by passing the following resolutions: "*Resolved*, That this congregation can support but one minister. *Resolved*, That the Rev. Dr. Rodgers be that minister. *Resolved*, That a committee be appointed to apply to the Moderator of the Presbytery, and request him to call a meeting of that body as soon as convenient, that we may apply in a regular manner for a liberation of this congregation from the Rev. Mr. Treat as one of our ministers." This left Dr. Rodgers sole pastor. He lived till May 7, 1811, other clergymen being joined with him in pastoral duties, when he died at the age of 84 years.

The foregoing sketch from 1716 down, and the quotations, are taken from the history of Presbyterianism in the fourth chapter of the "Life of the Rev. John Rodgers," by Professor Miller, of the Princeton Theological Seminary, which history, Dr. Miller, in a note on page 123 of the edition of 1840, says, "is compiled from documents which were prepared by Dr. Rodgers himself, and put into the hands of the writer several years before his decease."

It is singular that no mention is made in Dr. Miller's Life, of Dr. Rodgers's visit to the Regulators of North Carolina, described in the text.

On the 28th of February, 1777, Dr. Samuel Provoost, subsequently the Bishop, having declined the honor, Dr. Rodgers, then absent, was appointed Chaplain to the Provincial Convention, and on the 17th of the next May, Dr. Rodgers "being now in town, in pursuance of the said appointment," the Secretary was requested to ask him to open the deliberations every morning with prayer.<sup>1</sup> And about four months thereafter, on September 8, 1777, he was voted by that body "the sum of one hundred and eighty pounds to defray the expenses of the removal of his family to this place (Kings-

<sup>1</sup>Journals Prov. Con., Vol. I., pp. 818 and 936.

ton) at the request of the late Convention, and for his past services as Chaplain to this Council."<sup>1</sup>

The author's account of Dr. John Rodgers and his various strong references and statements throughout his work relative to the similar characteristics of Presbyterianism and republicanism—statements which may appear at this day to be too strong—have been strikingly and curiously corroborated by the address before the Pan-Presbyterian Council, at Edinburgh, in 1877, of the Rev. S. Irenæus Prime, D.D., a distinguished Presbyterian clergyman of New York, which has appeared as these sheets are going through the press. In this address the Rev. Dr. Prime, himself a descendant of the Presbyterian clergyman of that surname mentioned by the author in this history, says, in reference to this subject: "Our Presbyterianism helped largely to make us restless, and finally rebellious, when the country was under the British Crown. If the Church of England had sent all the colonists and the Church of Scotland had sent none, the history of the United States might never have been written separately from that of Great Britain. Bishop Horsley says: 'Calvin was unquestionably in theory a republican. So wedded was he to this notion that he endeavored to fashion the government of all the Protestant Churches upon republican principles.' Hallam writes: 'The school of Knox . . . had a system of local and general assemblies . . . with the forms of a republic.' Lord Macaulay says of the Scottish preachers: 'They inherited the republican principles of Knox,' and Isaac Taylor calls 'republicanism the Presbyterian principle.' [Quoted by the Rev. Dr. W. P. Breed.] And if I should pursue this point, the testimony would prove the statement made by our own historian, Mr. Bancroft, that 'the first voice publicly raised in America to dissolve all connection with Great Britain came, not from the Puritans of New England, nor the Dutch of New York, nor the planters of Virginia, but from the Scotch-Irish Presbyterians.' "

<sup>1</sup> Journals Prov. Con., Vol. I., p. 1058.

## NOTE II.

GEORGE DUNCAN LUDLOW, JUSTICE OF THE SUPREME COURT, SUPERINTENDENT OF THE LONG ISLAND MILITARY COURT OF POLICE.

*Vol. II., p. 10.*

THE author's account of George Duncan Ludlow's early career and appointment to the bench of the Supreme Court will be found on the 231st page of the first volume of this history. His resignation from chagrin and subsequent acceptance of a military judgeship, and the reasons therefor, are given in this volume. General Robertson's proclamation of his appointment as Superintendent of the Long Island Military Court of Police is dated July 15, 1780. As Justice of the Supreme Court his salary was £200 currency (or 500 dollars) per annum;<sup>1</sup> as Superintendent of the Court of Police, "a guinea a day," 365 guineas a year<sup>2</sup> (or 1,725 dollars). *Why* this Military Court of Police was established is explained fully on pages 24 and 25 of this volume. His residence was at Hempstead on Long Island. After the war he was made the first Chief-Justice of the colony of New Brunswick, and resided at Fredericton, the capital of that Province, where he died on the 12th of February, 1808.<sup>3</sup>

<sup>1</sup> Col. Hist. N. Y., Vol. VII., p. 456.

<sup>2</sup> See page 162, *post.*

<sup>3</sup> Sabine, Vol. II., p. 35.

## NOTE III.

GENERAL ROBERTSON APPOINTED GOVERNOR — HIS INSTRUCTIONS—THE OFFICIAL ORDER TO SEIZE REBEL ESTATES AND APPROPRIATE THEM TO THE LOYAL REFUGEES—INSTRUCTED TO REVIVE THE CIVIL AUTHORITY — REFUSES, AND CONCEALS THE INSTRUCTIONS FROM THE PUBLIC—IS OMITTED FROM THE ACT OF ATTAINER—HIS AMERICAN ESTATE NOT CONFISCATED, BUT ENJOYED BY HIM AND HIS HEIRS.

*Vol. II., p. 16.*

GENERAL JAMES ROBERTSON was appointed Governor of New York May 4, 1779.<sup>1</sup> His instructions from Lord George Germaine were given on the 9th of July, 1779, and show that the government in England desired the civil constitution to be revived, by a proclamation from Sir Henry Clinton as Commander-in-Chief, restoring it, and relieving the Province from military law under the Prohibitory Act.<sup>2</sup>

He was kept in London, as he said, against his own wishes by public service until the 16th of September, 1779, and then sailed in the Raleigh, of the "Cork Fleet," *via* Cork, Savannah, and South Carolina, for New York, where he arrived on the 21st of March, 1780,<sup>3</sup> and the next day took the oaths at the bedside of Governor Tryon, then ill with a severe attack of gout, the Council of the Province being present. Governor Tryon from his bed gave him the seals, but the rest of the formalities were transacted in an adjoining room.<sup>4</sup> His smooth method of reporting the appointments of William Smith and of George Duncan Ludlow will be found in his dispatch of September 1st, 1780, to Lord George Germaine.<sup>5</sup>

The following is the dispatch sent before he sailed, to Robertson, to seize and appropriate rebel estates, which the author refers to in his first note on page 16 of this volume as of

<sup>1</sup> Col. Hist. N. Y., Vol. VIII., p. 798.

<sup>2</sup> *Ibid.*, 798.

<sup>3</sup> *Ibid.*, 767.

<sup>4</sup> *Ibid.*, p. 801.

doubtful existence, and which, he says, was kept from the knowledge of all but the officials concerned, if it did exist :

*Lord George Germaine to Governor Robertson.*

No. 2.

WHITEHALL, 3 September, 1779.

SIR :—As in case such parts of the Province of N. York as are in his Maj<sup>y</sup>\* possession, should be restored to the King's peace, the care and the disposition of the deserted lands and Teneiments will properly fall under your direction, it is judged necessary to inform you of the ideas entertained here of the uses to which they may be applied until such time as the Legislature of the Province may otherwise dispose of them.

The easing this country of the heavy expense of Loyal Subjects, who have been deprived of their property in America and taken refuge in Great Britain, or other parts of his Maj<sup>y</sup>\* dominions, is the first object to which these lands and tenements should be applied. Such therefore of those meritorious sufferers as are at present in New York, or may come there, who have allowances from the public Revenue for their support as are capable of employing any of those Lands to advantage, and are willing to take them in lieu of their allowances, or such part thereof, as you shall judge them equivalent to, you will put in possession of the lands they apply to you for, upon such terms, as you shall agree with them for, and transmit to me a list of their names in order that their allowances may be lessened or discontinued accordingly. Should there be more deserted Lands than you can dispose of in this manner it will be proper to lease them to such Loyal Subjects as are desirous to take them at certain Rents, which you will appoint a proper person to collect in order to their being made a fund to go in aid of the grant of Parliament for the support of the Loyal Refugees in general.

With respect to the deserted tenements, such of them as shall be judged necessary for the accommodation of the King's troops must be appropriated for that purpose, and the remainder leased out upon certain Rents in the manner as is directed to be done with the deserted lands, and the income collected, and reserved for the same purpose ; and an exact account of the income of the whole transmitted. You will however be careful, that on no pretence any new charge is brought upon the public.

I am, etc.,

GEO. GERMAINE.<sup>1</sup>

The following extracts from the dispatches of the British Minister and General Robertson give the official views on the matters referred to by the author, and the reasons for not let-

<sup>1</sup> Col. Hist. N. Y., Vol. VIII., p. 773.

ting them be known at the time. Lord George Germaine instructed Governor Robertson as to the measures to be adopted in case of the revival of civil government, in his dispatch of July 9, 1779, as follows :

"It is most essential to the King's Service and the public welfare, that the Loyalty of the Members of the Council and every person employed in the executive part of Govern't. should be firm and pure. It is therefore His Maj<sup>y</sup>'s command that you do not appoint any person to a seat in the Council, or to any other office, or suffer any person to continue a member of the Council, or in the execution of any Office, of whose Loyalty and attachment to the constitution, there can be just ground to doubt. The calling an Assembly is a matter which will require much consideration, and the proper time of doing it must be left to your and the Council's judgment. It is the King's wish to give that proof to the inhabitants of New York, and of all the other Provinces, that it is not his Majesty's intention to Govern America by military law, but to allow them all the benefits of a local legislature and their former constitution; but it would defeat that end, if an Assembly were convened before such part of the Prov<sup>ce</sup> was restored to peace, as that the Members returned would compose the majority of the whole, if all those to whom the laws of the Prov<sup>ce</sup> give a right to elect, had returned Members. . . . The Abrogating and Annulling of all laws and pretended legal proceedings, since the abolition of legal Government, must of course be the object of a declaratory act.

"The arming the executive authority with sufficient powers to check and prevent disaffection and Rebellion in future will I hope be judged proper for another, and that the making reparation for the injuries and losses sustained by Loyal subjects during the Rebellion, will become the object of a third.

"The making a permanent provision for the Provincial expense, and fixing a ratio for the contribution of New York to the General charge of the Empire would be no more than suitable returns for the generosity of Parliament in relinquishing all purpose of imposing taxes in the Colonies, except as regulations of trade, and even in that case, suffering the Revenue arising from them to be carried to the account of the Colonies,<sup>1</sup> and should New York take the lead in so dutiful and grateful a measure, it could not fail of recommending the Prov<sup>ce</sup> to peculiar favour, and obtaining for her several extraordinary indulgences.

"Should you find the Assembly disposed to take such a step, as an encouragement to them to proceed you may assure them that his

<sup>1</sup> Compare the similar views of the Colonial Judge Robert R. Livingston, in his letter of May 5, 1775, to his son, Robert R. Livingston, given in Note LXVII., Vol. I., p. 753.

Maj<sup>v</sup> will most graciously consent to remit the arrears of quit rents, and it is his Majesty's intention to apply their future produce, and also the casual revenue to public services within the Province." <sup>1</sup>

Robertson, as above stated, arrived in New York and took possession of his government March 21, 1780. About three months after, under date of July 1, 1780, he thus writes Germaine, showing that civil government had not been revived, giving the reason why, and saying that the proposal had been kept from the knowledge of the public.

"As the General (*Clinton*) and Admiral (*Arbuthnot*) have acquainted your Lordship of their different sentiments about the renewal of Civil Government, they and the State will benefit by the appeal; but no advantage could arise from the publick, or even the Council's being informed that they did not think alike on the subject—I have taken some pains to keep the Question out of sight—And as these Gentlemen equally intend that the subject be protected in his property, be secured against the abuses and insults of military misrule, that a good police and good discipline may make the neighbourhood of the Army advantageous to the inhabitants, and the industry of these being excited by security and order, useful to the state, Sir Henry means to direct me to take the management of the police of the Province, and subject to his inspection, to endeavour to give the people all the encouragement and real advantages graciously intended them by his Majesty on my appointment. The Admiral expresses his approbation of the expedient; for my part I shall most gladly exert my utmost endeavours to answer the end of my appointment; if I can serve His Majesty and have the honor of executing the spirit of the instructions you honored me with, I care no more than the people by what name I am called."<sup>2</sup>

How the British Government was deceived and its intentions thwarted by its own officers, how civil government was kept crushed by their military power for the worst and basest of private purposes, how the loyal inhabitants of New York were cruelly robbed and infamously treated by the officials bound to protect them, the author in this volume graphically shows.

Notwithstanding Robertson was a British general in arms against the Colonies, notwithstanding he was the British Governor of New York, by whom and through whom the frauds

<sup>1</sup> Col. Hist. N. Y., Vol. VIII., pp. 767-8.

<sup>2</sup> Ibid., p. 794.

and cruelties described by the author were perpetrated—notwithstanding he enforced the severest measures against the Americans in general and those of New York in particular, yet he was *not* included in the Act of Attainder, and his estate was not only thereby saved from confiscation, but no proceedings under the vindictive acts passed subsequently to 1782 were ever taken against it. Moreover, it was taken care of, and the proceeds collected and remitted to him ; and after his death, in 1788, to his executors and to his widow, during the twenty years succeeding the peace, by Thomas Smith, James Duane, and James Morris.

The General on returning to England took all of his estate that it was possible to take ; the rest he left in the hands of William Smith (the Chief Justice and historian) as his agent, who had been his adviser for some years. On the 14th of April, 1783, he executed to Smith a full power of attorney to manage it. Smith, on his departure at the evacuation in the following November (he was also omitted from the Act of Attainder), left his wife (Janet Livingston) behind him to facilitate his business matters of all kinds. It was arranged that his brother, Thomas Smith, should succeed him as Robertson's agent. At the end of a MS. entitled "A List of Securities for Debts in America due to Lieutenant-General Robertson left in the hands of William Smith Esquire as his Agent, and by Mrs. Janet Smith delivered to Thomas Smith as attorney of General Robertson," now in the possession of the writer of this note, is the following receipt :

" NEW YORK 18 December 1784.

" Received of Mrs. Janet Smith the Bonds and Papers of which the above is a List, which were left in the hands of William Smith Esquire by his Excellency Lieutenant General Robertson, and now received by me as his Agent for to recover the Monies due thereon, and I promise to be accountable to him for such Sums of Money as may be received by me thereon for his use—of which List I now sign duplicates, one to be forwarded to General Robertson and the other to remain with Mrs. Smith for her husband's security.

THOS. SMITH.

4 August 1788—Examined with the original by us.

WILL. MONCURE,  
JAS CHALMER jun<sup>r</sup>.

The securities in this list, chiefly bonds and mortgages, amounted to £10,000 New York currency, and accrued interest. Smith proved finally a very unsatisfactory agent. In a letter to her friend Walter Rutherford, of New Jersey, in August, 1788, just after her husband's death, Mrs. Robertson says: "Upon advice received from your part of the world, the executors have thought it advisable to take our affairs out of Mr. Smith's hands. Mr. Duane has been so good as to consent to undertake the management of them."<sup>1</sup> Duane was appointed administrator of the personal estate in New York and manager of the real estate, and acted till his death, on February 1st, 1797, employing Richard Harison as his attorney. Mr. James Morris, of Morrisania, succeeded Duane, and was the last agent. Not till November, 1791, did they succeed in getting a schedule of the estate from Thomas Smith, who seems not to have transmitted some of the monies received. Mr. Duane, in his "Remarks" on this schedule, in 1792, states that the real estate then remaining was a lot in the city on which the General's house stood when it was burned while he resided in it, 5,000 acres on the Connecticut in Cumberland County, and 4,000 in Charlotte County—9,000 in all.<sup>2</sup>

The following letter, professedly explanatory of a contract relating to the above house between two persons so well known in New York in their day for grasping shrewdness and sharpness in affairs of business, is curious, and very characteristic of both parties :

NEW YORK, 1 Feby. 1773.

DEAR SIR :

As you were good enough to Ingage me the refusal of the House you bought of me at the price you gave for it, viz £3500 when you leave the Province. I do not thereby understand that I should reap the benefit of any Improvements or Alterations you should see fit to make during your Occupying the same, they to be valued and payed for by me at such valuation, Provided they are any essential additions or new Edifices.

This I send as an Explanation of our Contract on that head.

PETER R. LIVINGSTON.

<sup>1</sup> MS. letter in the editor's possession. The "Mr. Duane" was General Robertson's old friend, James Duane, and at the time Mayor of New York.

<sup>2</sup> MS. Remarks of Mr. Duane on Smith's schedule of Gen. Robertson's American property, sent to his executors in 1792, in the editor's possession.

The house was burned while in Robertson's possession, and Livingston never made a claim for the lot. Its subsequent history, as given by Judge Duane, in his "Remarks" above mentioned, is curious as well as instructive, as showing how one of the vindictive laws of the period could be gotten around when it was for the interest of their successful proposers to do so.

"The Title Deeds of the Lot of Ground which was conveyed to Gen<sup>l</sup>. Robertson by M<sup>r</sup>. Peter B. Livingston stand at the head of the Schedule. On this Article M<sup>r</sup>. Smith makes no remark. But it ought to be observed that in the first year of the Peace, the Legislator conceiving it equitable, that the Portion of the State which had been possessed by the British forces, during the war, should be made to contribute to the expences which had been incurred for the protection of the Country, passed an Act for raising a Sum of money on the Southern District. This Law, tho' complained of by some as partial, was generally complied with. A tax of about £35 was quotaed on the Gen<sup>l</sup>'s. Lot. M<sup>r</sup>. Smith probably conceiving the Gen<sup>l</sup>'s. property ought not to have been assessed, omitted to pay it, and the Lot was therefore as the Act directs sold at Auction. M<sup>r</sup>. Ramsay purchased it for the amount of the Tax there being no other bidder. A few other sales were made under similar circumstances ; but I believe, in every instance, the purchaser relinquished his claim in favor of the proprietor. M<sup>r</sup>. Ramsay however thought fit to avail himself of the advantage he conceived he had acquired, and has lately offered the Lot for Sale. We concluded it now necessary to take a decided part in behalf of the Generals representatives. From the nature of M<sup>r</sup>. Ramsays purchase, there is no apprehension that it can be considered with much favor, at the same time the Tax law under which it was sold must be rigidly executed. To validate the Title, it will lie on M<sup>r</sup>. Ramsay to prove, many circumstances in the proceedings, which the Act has made necessary ; and if there is a failure in any one of them, he will be defeated in his suit. The lot has been left open and unfenced ever since the destruction of the House. I have not hesitated in order to try the Strength of his claim to direct to be enclosed, and it is now in fence and well secured, as the possession of the Generals representatives. Hitherto M<sup>r</sup>. Ramsay has remained quiet, tho' there is no doubt bat he will make an effort to vindicate his claim. The object I wished for is obtained, as possessors we have the advantage of standing on the defensive, while he cannot recover but by the strength of a clear title ; his we trust will be found deficient in some or one of the circumstances directed by the act, and in such a case a small deviation will be fatal."

The foregoing facts are taken from MS. papers of the Robertson estate, in the editor's possession.

## NOTE IV.

THE LOYALIST LIVINGSTONS—PHILIP JOHN LIVINGSTON,  
THE BRITISH “SUPERINTENDENT AND MANAGER OF  
REBEL ESTATES WITHIN THE LINES”—STRONG LOYAL-  
TY OF LIVINGSTON MANOR.

*Vol. II., p. 16.*

LIKE all the other prominent families of New York, the Livingstons were divided in opinion at the Revolution, some of its members embracing and taking up arms for the cause of the Colonies, some for that of the King, while others declined taking an active part on either side.

For some years before, and at the outbreak of the revolution, one of the most prominent of this distinguished family, Philip John Livingston, had been, and was, High Sheriff of Dutchess County. He adhered to the King, with his entire family—father, brothers, and sons. John Livingston, his father, a merchant in New York, born in 1714, and who died in 1788, was a son of Philip Livingston, the second proprietor of the Manor, and his wife, Catherine van Brugh. His mother was Catherine de Peyster. He himself married Frances Bayard, a daughter of Samuel Bayard,<sup>1</sup> and a sister of the Samuel Bayard, Deputy Secretary of the Province, whom General Robertson afterward made Secretary. He had a brother and a brother-in-law, not “two brothers,” as the author in his note on page 16 states, in arms against America. His brother, John W. Livingston, and his brother-in-law, Abraham de Peyster, were captains in “The Kings American Regiment of Foot,” as Col. Edmund Fanning’s Regiment of Refugees was styled; <sup>2</sup> the commission of the former bearing date 18th December, 1776, that of the latter December 12th of the same year. At the disbandment of

<sup>1</sup> Holgate’s American Genealogies, “Livingston,” pp. 171 and 163.

<sup>2</sup> British Army Lists. Rivington’s Royal Army List of 1783.

that regiment at the end of the war, in 1783, both went upon the English Half-Pay List. Captain John W. Livingston returned to New York, married Ann Saunders, and died there in 1830.<sup>1</sup> His son, of the same name, however, entered the American army, and was the Lt.-Col. John W. Livingston of the war of 1812, and U. S. Marshal of the Northern District of New York from 1815 to 1837.<sup>2</sup> In Holgate's American Genealogies the names of five brothers and sisters of Philip John Livingston are only given, though it is stated in a foot-note on the same page, that his parents had "fifteen children who died without descendants."

Among the "informations" about Long Island tories, laid before the Committee on Conspiracies, of which John Jay was Chairman, on June 21st, 1776, is one stating that "John Wm. Livingston, jun., and one of the Colgans," were at Creedshill lately looking out for a fleet.<sup>3</sup>

Robert Gilbert Livingston, mentioned on page 47 of this volume, being an old man, took no active part in the controversy, but was also of loyalist principles, and one of his sons, Gilbert Livingston, was a Captain in the "American Legion," raised and commanded by General Benedict Arnold after his treason.<sup>4</sup> He was a merchant in New York, in partnership with Samuel Hake, also a loyalist, who went to England and then to Nova Scotia after the war. Among the securities of the American estate of General James Robertson, the last British Governor, was a bond of Hake and Robert G. Livingston to the General, Livingston's half of which was paid subsequently to the peace.<sup>5</sup>

In January, 1777, Robert G. Livingston, jun., and John Milledoler, were apprehended by the Committee of Rhinebeck precinct, and sent prisoners to Fishkill, with proofs of their disloyalty to the American cause, which were laid before the Committee to detect conspiracies, John Jay presid-

<sup>1</sup> Holgate's Am. Genealogies, p. 171.

<sup>2</sup> Ibid. 171.

<sup>3</sup> Calendar N. Y. Hist. MSS., Vol. I., p. 347.

<sup>4</sup> Gaines' Register for 1782, Army List.

<sup>5</sup> MS. Schedule of American Estate of General Robertson, in the editor's possession. See Note III. preceding.

ing, on the ninth of that month. The next day, after examining the sworn proofs sent to them, and Livingston himself, that Committee "Resolved, that the said Robert G. Livingston hath manifested a disposition very unfriendly to the American cause, and ought not to be permitted longer to have an opportunity of exerting his influence to the prejudice of his country, therefore,

"Resolved, That the said Robert G. Livingston be committed to the Gaol of the County of Ulster at Kingston, there to remain till such time as this Committee, or the Convention, or a future Legislature shall make further order concerning him, and that the keeper of said Gaol, do receive and detain him accordingly."<sup>1</sup> Shortly after Mr. Livingston requested a rehearing, and offered to disprove the charges, which request was granted. Mr. Egbert Benson and the committee of Rhinebeck and Mr. Livingston subsequently appeared on the 18th of January, 1777, before the Committee to detect Conspiracies, when the latter submitted his disproving evidence, but the Committee resolved "that the said Robert G. Livingston, jun., hath materially failed therein, and that his conduct was highly unfriendly to the American cause," but as he was willing to take the oath of allegiance to this State, it was "ordered that the said Robert G. Livingston, jun., be reprimanded, and on his taking the oath of allegiance aforesaid be discharged." He at once appeared, took the oath, and was discharged accordingly.<sup>2</sup>

On the 6th of January, 1777, the Journal of the Provincial Convention states, that "A letter without signature directed to Robert G. Livingston, dated at New York, December 30th, 1776, was read, and is in the words following, to wit:

"God bless you dear Boddy and John; go to Brunswick and sign the Declaration,<sup>3</sup> if not you will suffer. I would not advise you to come to New York; get old Mr. Livingston to send it in writing, which will be sufficient. I have wrote in mysterious terms, for prudent reasons; likewise I

<sup>1</sup> MS. Proceedings of the Com. N. Y. Hist. Soc. Library.      <sup>2</sup> Ibid.

<sup>3</sup> The Howes Declaration of 19th September, 1776.—ED.

have altered my hand. It is the advice of a blood relation, and a person who loves you both equal to himself; you may rely those who do not come in will be left in the mercy of three thousand Hessians next spring; truth, you may rely. Mr. Wallace is in New York, who treats me well. I live with Stuyvesant." It was referred to the Committee on Detecting Conspiracies, but no report from them on the subject appears in the Journal of the Convention. The MS. minutes of the Committee on Detecting Conspiracies make no mention of it whatever. The Whigs of the Livingston connexion were too strongly represented in both bodies, to permit any unnecessary inquiry on the subject. Who the "blood relation" who wrote this letter was, is not now known probably. But it clearly shows the strength of the loyalty of the Tory branches of the Livingston family. It was written about a fortnight after the arrival of Philip John Livingston's wife, family, and effects, in New York, as mentioned below.

Philip John Livingston, leaving his family in the Manor of Livingston, joined Sir William Howe and Lord Howe at Staten Island in the summer of 1776, before the battle of Brooklyn.<sup>1</sup> In the following December, on the 10th, he sent a letter by a flag of truce, through General Heath, from Verplanck's Point, addressed "To the Honourable James Duane, John Jay, Robert R. Livingston, Mr. Duer, and Anthony Hoffman, Esq., or either of them, Fishkill," "requesting his wife and family."<sup>2</sup> In this letter he asks their "interposition and interest with the Congress for the removal of my family and their baggage to New York," and "that they may be indulged with a sloop for their removal." He also "entreats the permission of Congress to pass to them," and says, "besides I wish once more to see my old friends, as I propose embarking for the Island of Jamaica as soon as a convenient opportunity offers; and am therefore

<sup>1</sup> Letter in Upcott Coll. N. Y. Hist. Soc. Library, Vol. IV., p. 383. Also Moore's Diary of the Am. Rev., Vol. I., p. 290.

<sup>2</sup> Journals Prov. Con., Vol. I., p. 748. Force Am. Ar., Fifth series, Vol. III., p. 1156.

desirous (as far as may be) of adjusting my late official business." And he further adds, "I should be glad if Mr. Walter Livingston was acquainted with my intention of going to Jamaica, as I think he will wish to see me before my departure."<sup>1</sup>

This letter was presented to the Convention the next day, and referred to a Committee consisting of Mr. Roosevelt, Mr. Yates, and General Scott. On the 13th of December they reported, "With respect to the application of Philip J. Livingston, your Committee report that he has been Sheriff to the County of Dutchess,<sup>2</sup> which office has from its nature given him great influence in the County, that while he resided in it he committed sundry overt acts of disloyalty to this and the other United States, and not only fled from a sense of Guilt, but voluntarily put himself in the hands of the Enemy;" and they further "beg leave to advise, that the applications of John Moore, the Rev. Charles Inglis, and Philip J. Livingston be rejected, not only because they conceive it would be dangerous to permit them to pass up into the Country, but because a permission to their families to go to New York with their Effects, besides furnishing a dangerous Channel of Intelligence [would] prove an incentive to Rebellion, and be an Act of direct Aid and Comfort to the Enemies of the Freedom and Independence of the United States of North America."<sup>3</sup>

The Convention however did not approve of the report of their Committee. Two of the Whig branch of the Livingstons were members of that body and two or three other members were connected with them by marriage. Their influence was felt, and the Convention voted that the wives, families, and effects, of Philip John Livingston, the Rev. Dr. Inglis, and John Moore, and that Mrs. Bruce, by birth Judith Bayard, Mrs. Lake and children, and Miles Sherbrook, and

<sup>1</sup> See letter in Force, Fifth series, Vol. III., p. 1156.

<sup>2</sup> His name is left out of the list of Sheriffs of Dutchess in the valuable Register of Colonial and State officials absurdly called the "New York Civil List," published yearly at Albany.

<sup>3</sup> Calendar N. Y. Hist., MSS., Vol. I., pp. 555, 556.

Alexander Wallace, have permission to go to New York. Mrs. Philip J. Livingston's letter of thanks to John Williams, President of the Convention, for the favor, is dated December 16, 1776,<sup>1</sup> only three days after the adverse report of the Committee above mentioned. They were all sent down from Verplanck's Point in a sloop, under a flag of truce, in charge of Major Nicholas Fish, and by him safely delivered to General Howe.<sup>2</sup> The letter of the Convention to Livingston, Dr. Inglis, and Moore, granting their requests was delivered to them at Verplanck's Point by John Moffatt, who reported to the Convention on the 17th, that "they were all highly pleased with the favor granted them, and desired me to return their compliments to the Convention, for the polite usage they had received from that body."<sup>3</sup> How Philip John Livingston gave up going to Jamaica and was made the British Superintendent and Manager of Rebel Estates within the lines, the author shows.

A very large proportion of the people of Livingston Manor were tories. As late as May, 1777, Robert R. Livingston, Matthew Cantine and Zephaniah Platt, jr., were "sent by the Provincial Convention to quell the disaffected." They wrote the President of the Convention, a letter, on the 8th of May, in which they state these facts :

MANOR OF LIVINGSTON, 8th May, 1777.

SIR : We find the number of conspirators infinitely greater than we could have conceived ; almost everybody in the Upper Manor (as it is sometimes called), particularly the eastern part of it, appears to have been engaged with the enemy, first by taking an oath of secrecy, and then an oath of allegiance to the King of Great Britain ; it appears to have been their design to have waited till the enemy came up, when they were to rise and take the whigs prisoners. We think it absolutely necessary that a court martial should be organized here to-morrow out of the officers of the Manor of Claverack and Rhinebeck regiments, for the trial of some few of the principal offenders. An act of grace should be prepared, though not yet issued, and a proper place provided for at least two hundred prison-

<sup>1</sup> Force Am. Archives, Fifth series, Vol. III., p. 1247.

<sup>2</sup> Ibid. 1351.

<sup>3</sup> Moffatt's letter, ibid., 1263.

ers, and provision be made for their maintenance.<sup>1</sup> It would be proper, also, to enable the Committee of the Manor to raise 50 men under Captain Gaasbeck for the District of the Manor of Livingston; and it would not, in our opinion, be improper to indulge Claverack and Rhinebeck districts with small bodies of troops for a short time.<sup>2</sup>

John Jay and Gouverneur Morris were ordered to prepare the "act of grace," and on May 10th it was reported, amended, and adopted. After a long preamble reciting that "divers of the subjects of this State," have been seduced, and left their wives and families, and joined the army of the King of Great Britain, etc., and "to give them an opportunity of returning to their duty," the Convention declares and proclaims "that all such of the delinquents above described, as shall on or before the first day of July next voluntarily take the following oath of allegiance to this State, viz.:

'I — do most solemnly swear in the presence of Almighty God, that I will bear true allegiance to the State of New York, and in all things do my duty as a good and faithful subject of this State; ' shall on producing a certificate thereof receive a full and free pardon of all treasonable acts heretofore committed against this State, and be restored to all the rights and privileges of the good people thereof."<sup>3</sup>

In the previous autumn, on the 28th of September, 1776, Colonel Humphreys of the Dutchess County Militia personally told the Provincial Convention, that the Dutchess County proportion of the last levies ordered could not "be raised voluntarily, but if otherwise, 'tis his opinion that there are so many disaffected that they cannot be drafted," and "that Capt. Johannes Van Duerson says his whole Company, except his Lieutenant and himself are Tories."<sup>4</sup> And Samuel Ten Broeck, Chairman pro tem., of the Committee of the Manor

<sup>1</sup> This was one cause of the establishment of *Prison Ships* by the New York Provincial Convention at Kingston Landing. Eleven days after the date of this letter the Sheriff reported 175 prisoners on board of the prison ships. See note LXV., Vol. I., p. 708.

<sup>2</sup> Journals Prov. Con., Vol. I., pp. 918, 919.

<sup>3</sup> Ibid., pp. 929, 921.

<sup>4</sup> Ibid., p. 651.

of Livingston, in October, 1776, wrote the Convention that "any effort to apprehend them [the Tories in the Manor] must prove ineffectual, from the number of disaffected persons in each company who give notice of the measures taken to secure them.<sup>1</sup>

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## NOTE V.

## THE FOUR MILITARY "COURTS OF POLICE" AND THEIR NINE JUDGES.

*Vol. II., pp. 18-22.*

THE "Courts of Police," as the Military Tribunals established in the Province of New York by Proclamation of the Generals in command were termed, each had two Judges, styled "Superintendent," and "Deputy Superintendent." In the one first established in New York City by Sir William Howe on the 1st of May, 1777, a third Judge was afterward added called "Assistant Magistrate." There were four of these "Courts of Police" as the author states. The one just mentioned was the first. The other three were all established by General Robertson, and were, one on Long Island established in June, 1780, one on Staten Island in October, 1780, and another in the City of New York in January, 1781, for the trial of causes under £10, and for the apprehension and commitment of felons, making two in the city itself.

The names of the Judges were as follows :

Judges of the First Court of Police in the City of New York.

*Andrew Elliott  
David Matthews  
Peter Dubois.*

<sup>1</sup> *Ibid.*, 671.

**Judges of the Second Court of Police in the City of New York.**

*William Walton  
William Waddell.*

**Judges of the Long Island Court of Police.**

*George Duncan Ludlow  
David Colden.*

**Judges of the Staten Island Court of Police.**

*Christopher Billopp  
Benjamin Seaman Jun<sup>r</sup>.*

To the seventh and eighth chapters of this volume the reader is referred for full accounts and illustrations of the proceedings of these infamous Courts, and in the latter chapter on page 163, will be found a full list of all their officers high and low, with the amounts of the pay of each respectively. The author's statement on page 22, that of these nine judges only two knew anything about law, that one of the two was George Duncan Ludlow, and that David Matthews was the other who was utterly ignorant of the laws of the land, is striking, and a little paradoxical. The apparent paradox in Matthews's case is explained by the fact that he had been some time Mayor of the City, and as such had presided in the Mayor's Court, and thus knew something of the forms, and had picked up a smattering of such law as was there practised, notwithstanding he "knew as little of the laws of the land, the acts of the province, or the Constitution of England, as any common pack-horse in the country," as the text states.

## NOTE VI.

## CRUSHING THE REVOLUTION ON THE CROMWELLIAN PLAN.

*Vol. II., p. 27.*

THE author's view that decided measures at first would have put an end to the American revolution—that is, decided measures after Great Britain had gotten into a position to carry them into effect—is perfectly true, as the many opportunities that Sir William Howe had to do so during his entire command, fully show. Had Howe really desired to crush the rebellion as it then was, he could have effected his purpose. Thousands of Americans held the same views as the author has expressed. But it was fortunate for America, and fortunate for England too, in reality, that a different policy prevailed. Had the loyal Generals in the late Southern rebellion acted as Howe did, and for as long a time—two years—that rebellion would never have been crushed.

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## NOTE VII.

## SAMUEL JONES, AND THOMAS JONES, UNLAWFULLY DEPRIVED OF LANDS BY PHILIP JOHN LIVINGSTON.

*Vol. II., p. 42.*

SAMUEL JONES, some of whose lands were wrongfully taken from him as described on page 42, was the Samuel Jones who was the first Comptroller of the *State* of New York, so well known in later life as the "Father of the New York Bar," and the father of the late Chancellor Samuel Jones.

THOMAS JONES, who suffered similar treatment, as described on page 43, was the author himself.

These two gentlemen were cousins, the latter the head of the Jones family, the former one of the sons of William Jones of the younger branch.

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#### NOTE VIII.

##### THE GIFT OF THE NEW YORK CITY REVENUES BY SIR WILLIAM HOWE TO DAVID MATTHEWS THE MAYOR—MATTHEWS NOT REALLY INVOLVED IN THE HICKEY PLOT.

*Vol. II., p. 48.*

THE account in the text of the misappropriation of the City's revenues by Howe's order, throws a flood of light on the British officials in the City of New York, their characters, their rapacity, and their crafty methods of robbing the City's treasury, and defrauding the City's creditors.

David Matthews the Mayor, the recipient of Howe's favors, was the same person who was arrested in 1776 for alleged participation in the "Hickey Plot" to assassinate Washington. He was so violently suspected that his life was in danger. He always denied the fact, and no proof was ever found against him. He was finally sent, by order of the Provincial Convention, a prisoner to Governor Trumbull at Hartford, "for treasonable practices against the States of America,"<sup>1</sup> and was confined in different places in that State and finally sent back to New York at the end of 1776, with the other prisoners who had been sent to Connecticut, without ever having had a hearing. In a letter to his old friend John McKesson, the Secretary of the Provincial Congress, written from Hartford on the 20th of August, 1776, he says :

"I have made so many fruitless applications lately that I am almost discouraged putting pen to paper again. Is it not very hard

<sup>1</sup> Gov. Trumbull's "Commitment" of Matthews, Journals Prov. Con., Vol. II., p. 275.

Mr. McKesson that the Convention will not furnish me with some resolve or certificate to enable me to contradict a most hellish report that has been propagated, and is verily believed throughout this Colony, that I was concerned in a Plot to assassinate General Washington and blow up the Magazine in New York? The Convention well know that such a report prevails. They also know it is as false as hell is false. Solely owing to this report, I have been obliged to decamp from Litchfield where I was stationed, and where the Committee thought my life in imminent danger."<sup>1</sup>

Two days later, he adds to the letter from which the above is an extract, the following postscript.

AUGUST, 22<sup>d</sup>, 1776.

I am now on my march back to Litchfield again, as I would not be suffered to remain here unless confined in jail. What horrid treatment is this? Govr. Trumbull would willingly have done everything to have accommodated me here, but our Convention say I must be sacrificed. It is too much for mortal man to bear. I am now to stand fire at Litchfield. May God only spare my life to meet my enemies face to face.

D. M.

To JOHN MCKESSON, Esq.

After the War Matthews went to the Island of Cape Breton, and was President of the Council, and Commander-in-chief of that Colony.

#### NOTE IX.

THE CITY OFFICIALS OF NEW YORK IN 1776—THEIR NAMES  
— THEIR LOYALTY — DAVID MATTHEWS, MAYOR IN  
PLACE OF WHITEHEAD HICKS, APPOINTED JUSTICE OF  
SUPREME COURT—SIR WILLIAM HOWE'S GIFT OF FERRY  
AND OTHER REVENUES TO MATTHEWS INDIVIDUALLY.

*Vol. II., p. 49.*

THE persons named below were the officers of the city of New York under its charter, on the first day of January, 1776.

<sup>1</sup> *Ibid.*, p. 280. In the second volume of the Journals of the Provincial Convention are the official statements, letters, and papers relating to Matthews at this period.

These two gentlemen were cousins, the latter the head of the Jones family, the former one of the sons of William Jones of the younger branch.

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"I have made so many fruitless applications lately that I am almost discouraged putting pen to paper again. Is it not very hard

<sup>1</sup> Gov. Trumbull's "Commitment" of Matthews, Journals Prov. Con., Vol. II., p. 275.

Mr. McKesson that the Convention will not furnish me with some resolve or certificate to enable me to contradict a most hellish report that has been propagated, and is verily believed throughout this Colony, that I was concerned in a Plot to assassinate General Washington and blow up the Magazine in New York? The Convention well know that such a report prevale. They also know it is as false as hell is false. Solely owing to this report, I have been obliged to decamp from Litchfield where I was stationed, and where the Committee thought my life in imminent danger."

Two days later, he adds to the letter from which the above is an extract, the following postscript.

ANNO, 28, 1776.

I am now on my march back to Litchfield again, as I much must be suffered to remain here under confinement in jail. What wretched treatment is this? Govr. Trumbull would willingly have done every thing to have accommodated me were not the Committee say I must be sacrificed. It is too much for words can express. I am now to stand first at Litchfield. May God now spare my life & protect my enemies face to face.

31 44

To JAMES MCKESSON, Esq.,

After the War Madison went to the State of New York and was President of the Council and Commissioner of the County.

#### NOTE IX

THE CITY GOVERNOR OF NEW YORK IS THE CHIEF JUDGE  
— THE CIVIL AND CRIMINAL JURISDICTION OF WHICH IS  
PLACE OF WETHERTON HOLLOW APPROXIMATELY IN THE  
SUPREME COURT — THE WILLIAMS HOLLOW IS THE JURIS-  
DICTORIAL REFERRED TO IN THE PREVIOUS INSTRUCTION

To Dr. 24

THE CITY GOVERNOR HAS BEEN THE CHIEF OF THE CITY OF  
New York since the year 1776.

WILLIAMS  
HOLLOW



The list is taken from "Gaine's New York Pocket Almanac for 1776," page 35. No list for 1776, or any year during the war, appears in any of the published "Manuals" of the corporation of New York. Whitehead Hicks, the Mayor named in the list, was, on the sudden death of Judge Robert R. Livingston, in December, 1775, appointed a Judge of the Supreme Court.<sup>1</sup> His commission is dated on the 14th of February, 1776. Upon this promotion he resigned, and David Matthews, who appears in the list as Alderman of the East Ward, was appointed Mayor in his place, by the Governor, and remained in office till the end of the British rule, on the 25th of November, 1783.

Following the names of the charter officers, is a list of the "*Other Civil Officers*" of the city and county, whose offices did not depend upon, nor were created by the charter. The first of these, the *Church-Wardens* and *Vestrymen*, must not be confounded with the church-wardens and vestrymen of Trinity Church, who were a different body, chosen only by the pew-holders of "The Parish of Trinity Church," under that church's charter, while the *City* church-wardens and vestrymen were persons appointed to perform certain civil duties under the Vestry Act of 1683, stated and printed in full in Note II. of volume first, page 392, which see. They were territorial parish officers like the similar officers in parishes in England now. This body existed continuously during the British rule, and performed their duties for the entire century between 1683 and 1783, or rather until the establishment of the military courts of police, by Sir William Howe and General Robertson. Even after the erection of the first court of police, in 1777, Robertson, then military commandant of New York, on the 27th of December, in that year, had to appoint a committee of seventeen gentlemen to take charge of the poor—one of their duties—"as," to use the words of his proclamation on the subject, "there is not a Vestry at present in this City, to assess the quotas of the Inhabitants, and to Superintend the Poor, as formerly."<sup>2</sup> Subsequently

<sup>1</sup> See Vol. I., p. 233, for an account of Hicks and his character.

<sup>2</sup> See the proclamation in the newspapers of the day.

the courts of police permitted the Vestry Act to be partly in force, see page 130 of this volume.

A LIST OF THE CORPORATION OF THE CITY OF NEW YORK.

The Worshipful Whitehead Hicks, Esq.,<sup>\*</sup> Mayor.

John Watts, Jr., Esq., Recorder.

ALDERMEN AND THEIR ASSISTANTS.

For the South Ward.

Francis Filkin, Esq., Alderman.

Mr. John Abeel, Assistant.

For the West Ward.

George Brewerton, Jr., Esq., Alderman.

Mr. Peter T. Curtenius, Assistant.

For the North Ward.

William Waddell, Esq., Alderman.

Mr. Stephen Terhune, Assistant.

For the East Ward.

David Matthews, Esq., Alderman.

Mr. Henry Brevoort, Assistant.

For the Dock Ward.

Andrew Gautier, Esq., Alderman.

Mr. Andrew Hamersley, Assistant.

For Montgomery Ward.

Benjamin Blagge, Esq., Alderman.

Mr. William De Peyster, Assistant.

For the Out Ward.

Nicholas Bayard, Esq., Alderman.

Capt. Anthony Rutgers, Assistant.

\* Appointed Judge of the Supreme Court, 14th of February, 1776, and succeeded as Mayor by David Matthews.

## OTHER CIVIL OFFICERS IN THE CITY OF NEW YORK.

## Church-Wardens.

Peter Curtenius and Abraham Duryee.

## Vestrymen.

|                   |                          |
|-------------------|--------------------------|
| Cornelius P. Low, | John De Peyster,         |
| John Read,        | Peter Mesier,            |
| Thomas Randall,   | Samuel Johnson,          |
| Jacob Remsen,     | William Ustick,          |
| Adrian Rutgers,   | William R. V. Cortlandt, |
| William Cockroft, | Jacob Dyckman,           |
| John Schuyler,    | Cornelius Haring.        |

John Harris Cruger, Esq., Corporation Treasurer.

Augustus Van Cortlandt, Esq., Town Clerk.

John Roberts, Esq., High Sheriff.

Edward Blagge, Esq., Coroner.

Francis Child and William Scott, Under Sheriffs.

Francis Child, Gaoler.

Patrick Welch, High Constable.

The author states, on page 51, that the city officials were "strictly loyal," except two Aldermen and one Assistant, or Common Councilman. The two Aldermen were probably Benjamin Blagge and Francis Filkin, and the Common Councilman, Peter T. Curtenius.<sup>1</sup> On page 56, however, he speaks of "four" of the members of the city corporation, out of the nineteen officers mentioned on page 51, as being "rebels." The fourth was probably the Recorder, John Watts, Jr., who was the only official under the Crown, in New York, who afterwards held office under the State, and under the United States, having been member of Assembly from the city, and Speaker, in 1791-2-3, and Member of Congress in 1793-95. He died in New York City, September 3, 1836. He was a son of the Hon. John Watts, of the Provincial Council, and

<sup>1</sup> As these names were prominent on the American side during the war.

his wife, Anne, youngest daughter of Etienne (Stephen) de Lancey, and sister of Lieut. Governor James de Lancey.

The present to Matthews of the profits of the ferries, markets, and slips, referred to on page 50, was made by Sir William Howe, in the winter of 1776-7. The rates of ferrage were increased and fixed anew by Elliott, Matthews, and Dubois, as Judges of the Court of Police, on the 13th of January, 1779, professedly "by order of the commandant," and published in the newspapers of the day.

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#### N O T E X.

##### THE CHAMBER OF COMMERCE AND THE MARINE SOCIETY OF NEW YORK—THEIR LOYALTY DURING THE WAR.

*Vol II., p. 53.*

THE meetings of the *Chamber of Commerce* (incorporated March 13, 1770), were in abeyance from May 2, 1775, till June 21, 1779,<sup>1</sup> on which last day the President, Isaac Low, the Vice-President, William McAdam, the Secretary, Anthony van Dam, and twenty members who were present at the meeting, signed a letter to General Daniel Jones, then the Commandant of the city, soliciting "a renewal of our meetings, in order that the many mercantile differences which so frequently happen may be adjusted." The letter was referred by General Jones to Sir Henry Clinton, the Commander-in-chief, who approved of its object, and the required consent was at once given by the Commandant in writing. From that time the Chamber met regularly, till the close of the war. Its different communications, letters, and addresses, to the British Generals and Governors, and to the Judges of the Courts of Police, showing its loyalty, are given

<sup>1</sup> "The State of Public Affairs having been such as not to require a meeting of the Chamber of Commerce at an earlier period," as their Register of Proceedings states.

in the newspapers of the day, and in its "Register of Proceedings," published in 1867, under the able editorship of Mr. John Austin Stevens. After the war it was reorganized, new members being chosen in place of the large number it lost at the peace on account of their loyalty.

"*The Marine Society of the City of New York in the Province of New York, in America,*" was granted a charter under that name by Governor Colden, on the 12th of April, 1770. Its objects were the promotion of maritime knowledge, and the aid of widows and children of deceased shipmasters. Its first officers were Leonard Lispenard, President; Capt. John Leake, Vice-President; James Jauncey, Treasurer, and Robert Benson, Secretary. Mr. Jauncey declined to serve, and Captain Linus King was chosen in his place. The Chairman of its Standing Committee was Captain Thomas Randall, and one of its members was Capt. Robert Richard Randall, who, long after the war, founded "*The Sailor's Snug Harbor*," one of the noblest charities in America. This Society was in active operation throughout the war, and was very loyal. At its annual meeting, January 11, 1779, it was voted that the President "do send to London for a new plate in the room of the old one, which was carried off in this Rebellion by Mr. Anthony Lamb." Its addresses to the different British governors and commanders appear in the newspapers of the day. On the 24th of January, 1780, at a meeting of the Society "at the house of John Marshall, in John Street," thirty-three members being present, it was proposed "to form a company out of this Society" by the name of the "*New York Marine Society Artillery Company*." This was done, the President, Vincent P. Ashfield, sea captain, was chosen Commander, and "a vast number of the gentlemen of the Society was immediately enrolled" "for the purpose of co-operating with His Majesty's troops in the defence of this city." Addresses were presented by it to Governor Tryon and to General Patterson, in July, 1780, thanking them for the attention and support they had given to the Society. Three days after the evacuation of New York, in 1783, the President, Thomas

Roach, resigned, and Alexander McDougall was chosen in his place. In 1786 the Society presented its petition to the Legislature to have its name altered, "in consequence of the late happy Revolution," as the style of the corporation had "become improper," and an act was thereupon passed, changing its name to "The Marine Society of the City of New York," by which it has been ever since, and is now, known as one of the great charities of the city.<sup>1</sup> In General Pattison's official return of the forces in the city in 1780, the strength of the Artillery Company is set down as 98.

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#### N O T E X I .

##### JOSHUA LORING, MRS. LORING, AND SIR WILLIAM HOWE.

*Vol. II., p. 57.*

IN speaking of Sir William Howe's donation of the City Revenues of New York to David Matthews, the Mayor, the author uses the striking illustration that he might with as much propriety "have presented Mrs. Loring with Rhode Island." On the 351st page of the first volume, he mentions Mrs. Loring and the office, "Commissary for Prisoners," to which Sir William Howe appointed her husband for his marital complaisance; and also Loring's starving the prisoners to his own increased emolument, and the death of 300 of them, before an exchange was determined upon.

The Lorings were Bostonians, and Sir William began his acquaintance with them during the British occupation of Boston. The family was a Massachusetts one. Joshua Loring was the second son of Caleb Loring of Hingham, in that colony, by his third wife Rebecca Lobdell, and was born in December, 1737.<sup>2</sup>

His name appears among the numerous inhabitants of Bos-

<sup>1</sup> The statements in this note are taken from the MS. "Journal of Proceedings of the Marine Society," in its possession.

<sup>2</sup> Savage's Genealogical Dictionary of New England Settlers, Vol. III., p. 117.

ton who addressed Governor Hutchinson in 1774, and General Gage in 1775,<sup>1</sup> by the latter of whom he was appointed on June 7th, 1775, "sole vendue master and auctioneer," a profitable office.<sup>2</sup> He was bred probably as a merchant. A mercantile letter dated Boston, 23d of September, 1773, in reference to the debt of a Mr. Mills, closing: "In behalf of Mr. George Green, yours, Josh<sup>a</sup>. Loring," which the writer of this note has seen in New York during the past year, would seem to show that he was then employed in the business of Mr. Green. Upon the evacuation of Boston in the spring of 1776, he and his wife accompanied the British army to Halifax, and thence came with it in the summer of the same year to New York. The author states that Loring was appointed Commissary for Prisoners "upon the close of the Campaign in 1776."<sup>3</sup> The earliest return of prisoners that I can find, signed by him, is that dated December 1st, 1776, showing a total of prisoners taken from the 17th of September to the 16th of November in that year, of 4,430, including those surrendered at Mount Washington.<sup>4</sup> Mrs. Loring was a Miss Lloyd, to whom Joshua Loring was married at the house of Colonel Hatch in Dorchester, Massachusetts, in the year 1769.<sup>5</sup> She was a very handsome woman, and noted for her love of play—a passion she indulged to such an extent, while in New York, that a letter of a British officer mentions that the favorite sultana lost 300 guineas at a single sitting.

Joshua Loring himself, was not such a brute as Cunningham the infamous Provost-Marshal, the keeper of the "Provost," now the Hall of Records, as he came from a better rank in life—nor was he guilty, if the testimony of American officers be believed, of the gross cruelties that disgraced that ex-Son of Liberty.<sup>6</sup> The known shortness of provisions in New York during November and December, 1776, and January and Feb-

<sup>1</sup> Curwen's Journal, 4th ed., pp. 467, 474.

<sup>2</sup> Sabine, Vol. II., p. 27.

<sup>3</sup> Vol. I., p. 351.

<sup>4</sup> Force, Fifth Series, Vol. I., p. 1058.

<sup>5</sup> Sabine, Vol. II., p. 27.

<sup>6</sup> Ethan Allen in a violent way, in his narrative says that Loring was worse than Cunningham.

ruary, 1777, from which the British army suffered, had a good deal to do with the famine and mortality of the prisoners of war at that period. Washington himself attributes them to this cause in a letter to Colonel Atlee.<sup>1</sup> "Provisions in general were scarce and dear, flour in particular, and all kinds of vegetables; that our officers who are prisoners with the enemy are walking about, but the soldiers were closely confined, and allowed but half allowance; that the prisoners were very sickly and died fast," is the testimony of "David Hunt of Westchester, a known friend to America," as taken and reported by General McDougal on November 26th, 1776, four days previous to which he had left New York.<sup>2</sup>

General Gold Selleck Silliman in his letters to his wife, gives a very favorable account of Loring while he was a prisoner in his charge. In one of May 17, 1779, he says: "Mr. Loring was so kind as to call on me and acquainted me, that in consequence of my request, he has determined this day to send out Samuel Silliman, and the other three young men, Jesse Burr, Ebenezer Knap, and Alvah Morehouse, from the Sugar House, together with Mr. Sherman who belongs to Stratford, in exchange for four prisoners that Gen<sup>l</sup>. Putnam has prepared to send in."

In another, dated "Gravesend, 9 miles from N. Y., May 28th, 1779," he says: "I intended before this to have taken the small-pox under the direction of your friend Col. Ely. I am now writing Mr. Loring to desire his permission to return to New York, and go into some quiet family there till I get through with it. I have no doubt he will oblige me if it is in his power consistent with his duty, *for that gentleman has used me with a complaisance, kindness, and friendship, that ought never to be forgotten by me.*"<sup>3</sup> He speaks in the same way of him throughout the correspondence, and as the letters were only intended for his wife, the testimony is of importance.

Loring had by his wife two sons, John Wentworth, and Henry Lloyd Loring, the latter of whom, a clergyman of the

<sup>1</sup> Force's Am. Archives, Fifth Series, Vol. III., p. 838.      <sup>2</sup> Ibid., p. 858.

<sup>3</sup> MSS. letters of Gen. Silliman. The italics are the editor's.

Church of England, died in 1832, Archdeacon of Calcutta. He himself died in London, in 1789.<sup>1</sup>

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## NOTE XII.

OFFICIAL PROCLAMATION AND NOTICE OF GENERAL ROBERTSON, ESTABLISHING THE LONG ISLAND COURT OF POLICE, APPOINTING GEORGE DUNCAN LUDLOW ITS "SUPERINTENDENT," AND PHILIP JOHN LIVINGSTON MANAGER OF REBEL ESTATES.

*Vol. II., p. 66.*

THE Proclamations of Robertson, referred to on page 35, and elsewhere, establishing the Long Island Court of Police, and appointing George Duncan Ludlow and Philip John Livingston to the offices in which they acted so flagrantly, as stated by the author on page 66, were published in the New York newspapers of the day, and are as follows :

*"By Lieutenant-General JAMES ROBERTSON."*

**"PROCLAMATION."**

"The Situation of Long Island rendering it necessary to establish the means of administering justice among the Inhabitants without subjecting them to the interruptions and delays attending an application to this city, and it being SIR HENRY CLINTON's desire that the people may have all the advantages free from the inconveniences which at this moment would flow from a renewal of civil government, I have, with his approbation, appointed GEORGE DUNCAN LUDLOW, Master of Rolls for the Province, and Superintendent of Police on Long Island, with powers on principles of equity, to hear and determine controversies, maintain peace and good order, and regulate the Police through the same, until civil Government in all its forms can take place; and all officers of the Island are required to aid the said Magistrate and his Assistant, in their office, and obey such orders as they shall, from time to time, receive for the effectual execution of their decrees.

JAMES ROBERTSON.

"New York, July 12, 1780."

<sup>1</sup> *Sabine, Vol. II., p. 27.*

"The Office for regulating the Police, on Long Island, will be immediately opened in the town of Jamaica, and regular attendance given for hearing and determining Controversies on the Tuesdays and Wednesdays of every week.

GEO. D. LUDLOW,

Master of the Rolls and Superintendent of the Police on Long Island.

"JAMAICA, LONG ISLAND, July 19, 1780."

Robertson's notice to refugees to apply for houses and lands of rebels to Philip John Livingston, referred to on page 35, and elsewhere in this volume, is as follows :

"His Excellency, Lieutenant-General James Robertson, with the approbation of the Commander-in-Chief, in order to give relief to the many loyal subjects who have been driven from their possessions by the Rebels, gives notice that the houses and lands belonging to persons in rebellion, or being amongst the Rebels, will be divided (except such as are wanted for the King's Service), and small lots assigned to distressed Refugee families, and these may be proportioned to the number and wants of the claimants. All persons under the above description are desired to leave their petitions for this purpose with Philip J. Livingston, at his house near Hellgate, on Long Island, or at the Provincial Secretary's office in Broad street, New York, when they will be taken into consideration.

"New York, July 12, 1780."

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### NOTE XIII.

#### THE BRITISH PROHIBITORY ACT—WHAT IT REALLY WAS.

*Vol. II., p. 98.*

"THE Prohibitory Act," as it was usually styled, which the author so thoroughly discusses in the sixth chapter of this volume, is chapter V. of the sixteenth year of George III., and is found in Volume XXXI. of the British "Statutes at Large," edited by Danby Pickering, page 135. It was passed late in November, 1775, and took effect January

1, 1776, and consists of forty-five sections, and occupies ten octavo pages. Its full title is :

*"An Act to prohibit all trade and intercourse with the Colonies of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the three lower counties on Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, during the continuance of the present rebellion within the said Colonies respectively; for repealing an act made in the fourteenth year of his present Majesty, to discontinue the landing and discharging, lading or shipping, of goods, wares, and merchandize, at the town, and within the harbour of Boston, in the province of Massachusetts Bay; and also two acts made in the last session of Parliament, for restraining the trade and commerce of the Colonies, in the said acts respectively mentioned; and to enable any person or persons, appointed and authorized by his Majesty, to grant pardons, to issue proclamations in the cases, and for the purposes therein mentioned."*<sup>1</sup>

It relates entirely to the trade and commerce of the colonies, and the forms and proceedings for carrying out the provisions it enacts in relation thereto. It was caused by, and was in retaliation for, the previous action of the Continental Congress, restraining trade and commerce with Great Britain. In the summer and early autumn of 1775, the Congress debated at length the policy of *prohibition*, and finally, on November 1, 1775, passed resolutions absolutely prohibiting all trade between the colonies and Great Britain and her dominions.<sup>2</sup>

The British prohibitory act contains neither word, nor clause, closing any court or tribunal whatever. Neither does it contain a word, or a clause, declaring the people of the colonies out of the King's protection. Appended is the first section of the act, in full, containing the preamble referred to by the author, on page 99, and also the first two sections, which contain all there is in it relative to pardons. The parts in italics are so printed in the Statutes at Large, from which the sections are taken.

*"I. Whereas many persons in the Colonies of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey,*

<sup>1</sup> The italics are in the original.

<sup>2</sup> Journals Congress, 1775, p. 228.

*Pennsylvania, the three lower counties on Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, have set themselves in open rebellion and defiance to the just and legal authority of the King and Parliament of Great Britain, to which they have ever been, and of right ought to be, subject: and have assembled together an armed force, engaged his Majesty's troops, and attacked his forts, have usurped the powers of government, and prohibited all trade and commerce with this kingdom, and the other parts of his Majesty's dominions; for the more speedily and effectually suppressing such wicked and daring designs, and for preventing any aid, supply, or assistance being sent thither during the continuance of the said rebellions and treasonable commotions,* be it therefore declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That all manner of trade and commerce is and shall be prohibited with the colonies [naming them as above]; and that all ships and vessels of or belonging to the inhabitants of the said colonies, together with their cargoes, apparel, and furniture, and all other ships and vessels whatsoever, together with their cargoes, apparel, and furniture, which shall be found trading in any port or place of the said colonies, or going to trade, or coning from trading, in any such port or place, shall become forfeited to his Majesty, as if the same were ships and effects of open enemies, and shall be so adjudged, deemed, and taken, in all courts of admiralty, and in all other courts whatsoever."

The forty-third section gives the date when the act was to go into effect, and its final clause states that it "shall continue to be in force so long as the said colonies respectively shall remain in a state of rebellion." Then comes the forty-fourth section, as follows:

"XLIV. Provided always nevertheless, and it is hereby enacted by the authority aforesaid, That in order to encourage all well-affected persons in any of the said colonies to exert themselves in suppressing the rebellion therein, and to afford a speedy protection to those who are disposed to return to their duty, it shall and may be lawful, to and for any person or persons, appointed and authorized by his Majesty to grant a pardon or pardons to any number or description of persons, by proclamation, in his Majesty's name, to declare any colony or province, colonies or provinces, or any county, town, port, district, or place, in any colony or province, to be at the peace of His Majesty; and from and after the issuing of any such proclamation in any of the aforesaid colonies or provinces, or if his Majesty shall be graciously pleased to signify the same by his royal proclamation, then, from and after the issuing of such procla-

mation, this act with respect to such colony or province, colonies or provinces, county, town, port, district, or place, shall cease, determine, and be utterly void ; " and then closes by providing that if any captives are made after the issuing of such proclamation or proclamations, that they shall be restored to their owners upon due proof of ownership made.

The forty-fifth and final section of the act is :

" XI.V. Provided always, That such proclamation or proclamations shall not discharge or suspend any proceeding upon any capture of any such ship or vessel, made before the date and issuing thereof."<sup>1</sup>

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#### NOTE XIV.

JOSEPH GALLOWAY'S FORCED CONSTRUCTION OF THE BRITISH PROHIBITORY ACT—ADOPTED BY THE CONTINENTAL CONGRESS—SUBSEQUENTLY ADOPTED BY THE BRITISH AUTHORITIES IN NEW YORK AS A BASIS FOR THEIR OFFICIAL PLUNDERINGS AND RAPACITY DURING THE WAR.

Vol. II., p. 108.

IT is the British Prohibitory Act which is referred to in that clause of the arraignment of George III. in the Declaration of Independence, which says, "*He has abdicated government here by declaring us out of his protection, and waging war against us.*" The author affirms that Joseph Galloway, while a member of the Continental Congress, was a " principal hand in setting up and supporting " " the forced, strained, and ungenerous construction of this act," which Jefferson crystallized in the first sentence of the above clause of the Declaration of Independence ; that he brought it to the notice of the New York authorities, after he went over to the British, and that they, seeing the opening it afforded for plundering under the forms of law, at once adopted it, and made it the basis of all

<sup>1</sup> Statutes at Large, Vol. XXXI., p. 154.

the iniquities and cruelties perpetrated by them during the war, which he so fully and graphically describes.

Galloway came to the British army in New York in the beginning of December, 1776, having joined General Vaughan in Jersey, on the 28th of the preceding November, and continued with it till the evacuation of Philadelphia, on June 18, 1778, on which event he returned to New York, and late in the autumn of the same year went to England, where he died, in September, 1803.

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#### NOTE XV.

##### THE AUTHOR'S "PORTRAIT" OF GALLOWAY—DID HE PLAN HOWE'S EXPEDITION TO THE HEAD OF ELK?

Vol. II., p. 109.

IN the brief, and vivid "portrait" of Galloway, as the author calls it in his note on page 109, it is affirmed that "he planned the expedition to Philadelphia by the way of the Chesapeake, which eventually proved the ruin of America." After Galloway became opposed to Sir William Howe, who had aided him in America, he testified, on his examination before the Committee of the House of Commons, in June, 1779, that he first suspected Sir William was going to the Chesapeake from a conversation with Admiral Lord Howe, whom he met accidentally on the road near New York after returning from Hillsborough in New Jersey, that he sent, a few days after, to Sir William, through Capt. Montresor, a memorandum of the difficulties to be apprehended in going to the Chesapeake, in order to induce him to go up the Delaware; and that subsequently he had a personal interview with Sir William on the subject.<sup>1</sup> The author's "portrait" was evidently drawn after the publication by Galloway of his "Examination," and his other pamphlets, as they are mentioned therein.

<sup>1</sup> Balch's edition of Galloway's *Examination*, pp. 30, 31.

It is, therefore, clear that he did not credit him on this point at all.

Compare Sabine's short summary of Galloway's character at the close of the sketch, on the 457th page of the second volume of his "American Loyalists," with the author's "portrait." The agreement of their views is remarkable.

Whether General Charles Lee's treasonable "plan" for a Chesapeake expedition, communicated to the Howes on March 29, 1777, in New York, (mentioned in Note LVIII. of the first volume) was the origin of Howe's head of Elk expedition, or whether it was planned by Galloway, as the author avers, is a most interesting question. Certain it is that Howe's first intimations to the British Minister of War, Lord George Germaine, of a Southern expedition, are in despatches dated after the capture of Lee, and the junction of Galloway, and while both were in New York. Certain it is, too, that Galloway's joining the British army was nearly coincident with that capture, the former coming in to General Vaughan on the 28th November, and the latter being taken on 13th December, 1776. Certain it is that Howe's reasons for his movement have never been satisfactorily explained by himself, by his brother Lord Howe, or by anybody else. And we know, from the following MS. note of Sir Henry Clinton,<sup>1</sup> that but two officers in his army approved it: "I owe it to truth to say, there was not a man in the army, except L. C.<sup>2</sup> and General Grant, who did not reprobate the move to the southward, and see the necessity of co-operation with General Burgoyne.—C." No movement of the British army during the whole war perplexed and troubled Washington so much as this. He could not account for it. It must be left to the future to determine, by further investigation, or further evidence, whether the treason of the second general of the American army, or that of a leading member of the Continental Congress, caused this extraordinary movement to be made.

<sup>1</sup>On the margin of his own copy of Stedman's History, Vol. I., p. 289.

<sup>2</sup>Lord Cornwallis.

## NOTE XVI.

THE EFFORT OF ITS INHABITANTS TO HAVE CIVIL GOVERNMENT RESTORED IN NEW YORK, IN OCTOBER, 1776—PETITION TO THE HOWES FOR THAT OBJECT—ITS SIGNERS' NAMES—MISREPRESENTED BY HISTORIANS AS A LETTER OF SUBMISSION TO THE BRITISH COMMANDERS.

*Vol. II., p. 117.*

NO single incident in the Revolution has been more misunderstood, and none more misrepresented, than the attempt of the people of New York to obtain the re-establishment of constitutional civil power, in place of military rule, in October, 1776. The text states the true reasons and the real objects of the Petition to the Howes "to be restored to the King's peace." It was presented in October, 1776, was dated the 16th—just a month after the recapture of the city by the British army. It was signed by nearly 1,000 of the male inhabitants of the city and neighborhood, of all degrees and conditions in life, and of all denominations of Christians. It was the first step they could take toward the renewal of civil government. The Declaration of Independence destroyed it in the preceding July. And when, in the following September, the city and vicinity were again under the Crown, its inhabitants, for their own protection, naturally desired their old constitutional government restored and put again in operation, as the text states. Historical writers, however, have represented this petition, so numerously signed, as "a letter of submission," or, as a mere complimentary address to the British chiefs—an offering of adulation to the Howes—"a specimen," in the words of the brief introduction to the document and its list of signers, in a volume of miscellaneous Revolutionary papers issued in 1861, by the Mercantile Library Association of New York, "of that class of papers so popular among the subjects of

VOL. II.—28

European rulers." <sup>1</sup> Hence its signers have been termed Ministerial Tools, Howe's Addressers, Tory Villains, and the list of their names "The Black List."

These misrepresentations, it is believed, in the case of later writers especially, have been simply the result of mistake and misapprehension of the object and purport of the petition. The customary terms then in use in America, when referring to the Sovereign in public documents, have been erroneously interpreted as evidence of slavishness. Chief Justice Horsmanden's letter to Governor Tryon, and the latter's reply which accompany the document, clearly show the real object aimed at.

The petition is dated October 16, 1776, and so is Chief Justice Horsmanden's letter to Governor Tryon, asking him to present it. The names were signed during the next eight days, the certificate of their being signed voluntarily, of William Waddell and James Downes, who superintended the signing, being dated on the 24th, and Governor Tryon's reply to the Chief Justice stating that he had presented it to Lord Howe, being dated the next day, the 25th, the day of the presentation. It will be noted how very accurately the author has stated the evasive reply of Lord Howe, as proven by this official letter of Governor Tryon. The private views of the Howes on the subject are given on page 118. The reader will understand the matter better, if the letter of Chief Justice Horsmanden to Governor Tryon, and the reply of the latter, both of which will be found at the end of the list of names, are read immediately after reading the petition itself. The petition, the names of the signers, and the accompanying letters of Horsmanden and Tryon, are given below in full. They were published in Gaine's *New York Gazette and Weekly Mercury* just after they were presented. Unfortunately, no file of that paper for the latter part of 1776 exists in any of the Public Libraries of New York. Two or three numbers only of September, 1776, are in that of the Historical Society, but all are previous in date to the Petition. In 1859, Abraham Tomlinson, of Poughkeepsie, New York, an antiquarian, who once had

a sort of museum in that city, brought to the writer's house in New York for examination, a collection of MS. Revolutionary papers, chiefly found by him at Kingston, New York, most of which had evidently been papers of the New York Provincial Convention, which sat for some time at that place. In the collection was an old written copy of this Petition, and the names signed to it and the letters of Horsmanden and Tryon, with the following note at the end in a different hand-writing :

"The above is extracted from Gaine's *New York Gazette*, No. 1,306, November 4, 1776.

CHAS. TILLINGHAST."

Tomlinson's collection was subsequently bought by a subscription among a few gentlemen, of whom the writer was one, and presented to the Mercantile Library Association of New York. This institution subsequently printed privately, in 1861, a selection from the collection with a few other papers, in a thin quarto volume of 184 pages,<sup>1</sup> in which were included the petition, the names and the accompanying letters. From this volume, and from a MS. copy of the documents and the names of the signers, which Mr. Tomlinson permitted to be taken while he owned them, and which is now in the possession of the gentleman who made them, and with his permission, these interesting and valuable documents are here reprinted. The names are arranged alphabetically in the printed volume, though they were not so, of course, in the original paper. This arrangement, with corrections from the copy, has been followed here, for unfortunately, the original papers have disappeared from the Library of the Mercantile Association, as the writer found on making a personal search, and the custodian of the Library informed him that it was not known what had become of them. The notes of identification of the signers are taken from the

<sup>1</sup> Under the direction of a Committee of the Association. The title of the volume—not very correct—is "New York City During the American Revolution." The preface states that the introduction and the historical notes are by Mr. Henry B. Dawson, the well-known editor of the Historical Magazine.

printed volume, except those marked with small letters, which have been added by the writer of this note.

As the author's brief note at the foot of page 117 of the text, mentions a few names of signers which are not on this list, it is probable that there may have been copies of it circulated for signature on Long Island and Staten Island. The Petition and letters are also printed in the third volume of Almon's "Remembrancer," pages 122 to 124. The precise number of signers is 948. The first name on the written list as signed, was "Daniel Horsmanden," and the last "Lawe Bayard." The last is probably a copyist's mistake for "Lewis Bayard."

#### PETITION.

To the Right Honorable, Richard, Lord Viscount Howe—  
of the Kingdom of Ireland—

And to His Excellency the Honorable William Howe Esq'  
General of his Majesty's Forces in America ; the King's Commissioners for restoring Peace to his Majestys Colonies in North America—

Your Excellencies, by your declaration, bearing date July 14<sup>th</sup>, 1776, having signified, that "the King is desirous to deliver his American Subjects from the Calamities of War and other Oppressions which they now undergo ; and to restore the Colonies to his protection and peace"—and by a subsequent Declaration, dated Sep'. 19<sup>th</sup> 1776, having also been pleased to express your desire "to Confer with his Majesty's well affected subjects, upon the means of restoring the public Tranquility and establishing a permanent union with every Colony, as a part of the British Empire.—We Therefore, whose names are hereunto Subscribed, Inhabitants of the City and County of New York, in the province of New York, reflecting with the tenderest emotions of Gratitude on this Instance of his Majesty's paternal Goodness ; and encouraged by the Affectionate manner in which his Majestys gracious purpose hath been conveyed to us by your Excellencies, who have thereby evinced that Humanity, is inseper-

able from that true Magnanimity and those enlarged sentiments which form the most Shining Characters—beg leave to represent to your Excellencies—

That we bear true allegiance to our Rightful Sovereign George the Third as well as warm affection to his sacred person Crown and Dignity.—That we Esteem the constitutional Supremacy of Great Britain, over these Colonies, and other depending parts of his Majestys dominions, as Essential to the Union, Security, and Welfare, of the whole Empire, and sincerely lament the Interruption of that Harmony, which formerly subsisted between the Parent State and these her Colonies—That many of the Loyal Citizens have been driven away by the Calamities of War and the Spirit of Persecution which lately prevailed ; or sent to New England, and other distant Parts. We therefore hoping that the sufferings which our absent fellow citizens undergo for their Attachment to the Royal Cause may plead in their behalf ; humbly pray that Your Excellencies would be pleased on these our dutiful representations to Restore this City & County to his Majesty's Protection and Peace—

NEW YORK Oct<sup>r</sup> 16<sup>th</sup>—1776

#### LIST OF SIGNERS.<sup>1</sup>

\* Haob Aaron, John Abeel, <sup>b</sup> Abm. J. Abramse, Philip Ackert,<sup>3</sup> Jeramiah Ackley, John Ackley, Abraham Adams, Edwin Agar, Ernest Aimes, Jeronimus Akemsen, Stephen

<sup>1</sup> This note appears in the printed volume above mentioned. "In the following alphabetical arrangement of the names, their original order has been departed from for the sake of affording more ready reference, and to avoid the necessity of too tedious an index. Where the same name was found more than once, it has been indicated by a figure following it, showing the number of times that it appeared in the list. Whether these in all cases denoted different individuals it is now difficult to determine, but the probability is that they did not in every instance."

Fuller information concerning some of these signers will be found in "The American Loyalists; or, Biographical Sketches of Adherents to the British Crown," by Lorenzo Sabine, Esq. Second ed. Crown 8vo. Boston, 1864.

<sup>a</sup> Probably a copyist's mistake for Jacob.

<sup>b</sup> Of the well-known Dutch family of that name in New York.

<sup>3</sup> Philip Acker, a retailer of liquors in George street, opposite the Barrack gate.

**Allen, Thomas Allen, George Allison, Robert Allison, Jeronimus Alstyne, John Alstyne,<sup>a</sup> James Amar, John Amerman, John Amiel, Jun., John Amory, Daniel Amos, John Andariese, Stephen Anderrese, John Antill,<sup>1</sup> Lewis Antill, Cha<sup>z</sup> W<sup>d</sup> Apthorpe,<sup>b</sup> John Archer, Philip Arcularius, Francis Arden,<sup>c</sup> Michael Arnott, Peter Arrell, Gilbert Ash, V. Pierce Ashfield, Robert Atkins, Thomas Atkinson, Richard Auchmuthy, Robert N. Auchmuthy, Samuel Auchmuthy,<sup>d</sup> Daniel Aymar (2), William Aymar, William Axtell.<sup>e</sup>**

Theophylact Bache, Wm Backhouse, John Badger, Joseph Bagley, Elias Bailey, William Bailey, Samuel Baldwin, Wm Balfour, Isaac Ball, Titus Ball, Evert Bunker, Jun., Peter Bannot, Paulus Banta, Edward Barden, George Barke, Thomas Barnes, Henrich Barr, John Barwick, Sam<sup>l</sup> Bates, William Berriman, Lawe Bayard, Robert Bayard, Samuel Bayard,<sup>f</sup> Wm Bayard,<sup>g</sup> William Bayley, Thomas Bean, Jacob Beittumuer, James Bell, Joseph Bell, Samuel Bell, Jun., William Bell, Grove Bend, John Bengston, John Bennet, Christopher Benson,<sup>h</sup> Jacob Berger, Henry Bernt, Peter Berton, Fred<sup>k</sup> Bicker, John Binches, Moses Bingham, John Bishop, Richard Black, John Blackare, Patrick Blancheville, Isaac Blanck, Jere-

<sup>a</sup> The Alstynes of New York and Westchester.

<sup>b</sup> John Antill, Esq., postmaster of the city and agent for the packet-boats.

<sup>c</sup> Charles Ward Apthorpe was a member of the council, residing at Bloomingdale.

<sup>d</sup> Francis Arden was a butcher doing business in Fly market—the owner of Molyneaux the boxer, who was known as “Pete Arden” while he was in slavery in New York.

<sup>e</sup> Rev. Samuel Auchmuthy, D. D., rector of Trinity Church, New York. He graduated at Harvard University in 1742; and on the 3d of March, 1777, he died in this city.

<sup>f</sup> Colonel William Axtell was a member of the council, residing at Flatbush, L. I.

<sup>g</sup> Samuel Bayard, one of the firm of William Bayard & Co., importers. He was also assistant secretary of the province.

<sup>h</sup> Colonel William Bayard, head of the old mercantile house of William Bayard & Co. In the earlier stages of the Revolutionary struggle he acted with the people, and was a member of the “Committee of Fifty.” He also entertained the Massachusetts delegates at his house on the North River, in 1775.

<sup>i</sup> Christopher Benson, an unlicensed retailer of liquors, opposite the theatre, south side of John street, near Broadway.

miah Blanck, Waldron Blean,<sup>1</sup> Daniel Blockner, Christian Bloom, Archibald Blundell, Christopher Blundell,<sup>a</sup> James Board, Henry Boel,<sup>b</sup> Jacob Boelen, Nicholas J. Bogart, Peter Bogart,<sup>c</sup> Christian Bollmain, Anthony Bolton, Jacob Bosher, Fred. Botticher, John Bowles, Samuel Bowne, Samuel Boyer, Thomas Breune, David Breimar, Charles John Brannon, Isaac Brasher, Isaac Bratt, Simon Breasted, Elias Brevoort, Henry Brevoort,<sup>d</sup> George Brewerton, Jacob Brewerton, James Brewster, Alexander Bridges, John Bridgewater,<sup>e</sup> David Brill, John Brooks, Ab<sup>m</sup> Brower, Sebtent Brower, Charles Brown,<sup>f</sup> William Brown, James Browne, John Browne, Thomas Brownejohn,<sup>g</sup> Joseph Browning, Robert Bronson, James Bryad, Thomas Buchanan,<sup>h</sup> Andries Buhler, William Will<sup>m</sup> Bull, Olive Burgess, John Burns, Thomas Buroton, John Burrowe, Wm Burton, Charles Bush, James Bush, John Buxton, Godfrey Bydebuck, Garrard Byrn.

John Calder, William Caldwell, Samuel Camfield, Daniel Campbell,<sup>i</sup> D. Campbell, Duncan Campbell,<sup>j</sup> George Campbell, John Campbell (2), Josiah Cannon, Dennis Carleton,

<sup>1</sup> Waldron Blean was captain in the third battalion of New Jersey volunteers in 1782.

<sup>a</sup> Christopher Blundell, butler to Gov. Clinton, of the *Province of New York*. His daughters were favorites of General James Robertson during the war.

<sup>b</sup> Henry Boel, "Clerk to the Post Office."

<sup>c</sup> Peter Bogert, residing in Dock (*now Water*) street.

<sup>d</sup> Henry Brevoort, a market gardener in the vicinity of the present Fifth avenue and Washington square. The father of the late Henry Brevoort who resided in that vicinity.

<sup>e</sup> John Bridgewater, an unlicensed retailer of liquors "near the new Dutch Church" (*corner of Fulton and Williams streets*).

<sup>f</sup> Charles Brown, an unlicensed retailer of liquors, on the corner of Broad street and Verlattenberg hill (*Exchange place, west from Broad street*).

<sup>g</sup> Thomas Brownejohn, a druggist and apothecary, doing business at the corner of Wall street and Hanover square (*now Pearl street*), next door to the book store of Hugh Gaine.

<sup>h</sup> Thomas Buchanan, one of the celebrated firm of Walter and Thomas Buchanan, importers and shipping merchants. This house was rendered unusually conspicuous from the fact that to it was consigned the tea-ship which was returned to London, with its cargo, by the people of New York, in April, 1774.

<sup>i</sup> Daniel Campbell, a retailer of liquors at Corlies Hook.

<sup>j</sup> Duncan Campbell, an unlicensed retailer of liquors in Beekman street, near St. George's Chapel.

Adam Carr, Anthony Carr, Robert Carr, Gideon Carstang, Thomas Carter, Thomas Cater, Richard Coughterry, Tadmas Chadwick, Jn<sup>o</sup> Chapman, Robert Cheeseman,<sup>1</sup> Joseph Chew, Johannis Chorberker, Alexander Clark,<sup>2</sup> Archibald Clark, Daniel Clark, John Clark,<sup>3</sup> Clement Cooke Clarke, John Clarke, Scott L. Clark, Samuel Clayton, Thomas Cleathen, William Closworthy, William Cochran, Philip Cockrem, Wm. Cock roft,<sup>4</sup> Joseph Coff, James Coggershall,<sup>5</sup> Aaron Cohn, Charles Colbourn, John Cole, Joseph Collines, Thomas Collister, Mathias Compton, Nicholas Connery, John Cooder, George Cook, William Cock, John Clarke Cooke, Michael Coon, Henry Coons, William Corbey, James Corin, George Corselius, William Corselius, Andrew Coughlan, Conrad Corin, Francis Cowley, John Cox, Ludwig Cox, Bartholomew Coxetter, Dennis Coyl, Patrick Coyle, Peter Covenhoven,<sup>6</sup> Robert Crannell, John Crawford, John Crawley, Balthasar Creamer, Lud. Creamer, Martin Creiger,<sup>7</sup> George Croger, John Ludtz Crouscoup, Pietor Crowder, Jn<sup>o</sup> Harris Cruger,<sup>7</sup> William Crillen, George Cummings Matthew Cushing.

Benjamin Daffigney, John Downlong, John Darg, Jn<sup>o</sup> Baltis Dash, Sen.,<sup>8</sup> John B. Dash, Jun., John Davan,<sup>9</sup> John

<sup>1</sup> Robert Cheeseman, a retailer of liquors in Broadway, near Pearl street.

<sup>2</sup> Alexander Clark, a retailer of liquors in New Chappel street (*now West Broadway*).

<sup>3</sup> John Clark (or Clarke ?). If the former, during thirty years the clerk of Trinity Church, who, in June, 1783, removed to St. John, New Brunswick, and in August, 1846, still lived there. If the latter, a retailer of liquors in Robinson street.

<sup>4</sup> William Cockroft, an old merchant who had long been a dealer in "European and India" goods, near the Fly Market.

<sup>5</sup> James Coggeshall, "Land Waiter," attached to the custom-house in the port.

<sup>6</sup> Martin Cregier, a retailer of liquors in Nassau street.

<sup>7</sup> John Harris Cruger, son-in-law of General Oliver De Lancey. He was treasurer of the city; a member of the council; a lieutenant-colonel in the service, commanding at Fort Ninety-six when it was attacked in 1781; and, at the peace, retired to England.

<sup>8</sup> Of the well-known Brooklyn family of this name.

<sup>9</sup> John Baltis Dash, senior, kept a hardware and tin store opposite the Oswego, or Broadway Market.

<sup>10</sup> John Davan, leather dresser and breeches maker, at the sign of the "Crown and Breeches," next door to Messrs. Robert and John Murray, Queen (*now Pearl*) street, near the Fly Market, where he transacted a very extensive wholesale and retail trade.

Davan, Jun., James Davis, Wm. Day,<sup>1</sup> William Deall, James Dean, Elk. Deane, James Deas,<sup>2</sup> Jno. De Clue, John De Forest, Joseph Degroot, Sen., Isaac De Lamate, John De Lancey,<sup>3</sup> Jno<sup>4</sup> De Lancey, Jun., Oliver De Lancey,<sup>4</sup> Jonathan Delano, Francis Humbert De la Roche, James Demasney, Michael Denny, Elias Desbrosses, James Desbrosses,<sup>5</sup> James Desbrosses,<sup>6</sup> Jun., Henry Detloff, John Detrich, Will<sup>m</sup> Devereaux, David Devoore,<sup>6</sup> Guert Sp<sup>r</sup> De Wint, John Dikeman,<sup>7</sup> Barnnae Dill, Silvanus Dillingham, Anthony Dodane, Amos Dodge, Thomas Dodge, Adam Dolmidge, Robert Donhire, Archibald Donaldson, Thomas Dorman, Peter Dorry, Walter Dougall, John Dougan, Edward Doughty,<sup>8</sup> Matthew Douglass,<sup>9</sup> John Dowers, James Downes (2), John Drummond, Edward Drury, Cornelius Druger, John Dudley, Christopher Dugan, Robely Dukely, Nicholas Duley, Jacob Dulmadge, John Duly, John Dumont, Joseph Durburrow, Jacob Durye, Derick Duryee.

<sup>1</sup> William Day, a retailer of liquors in Warren street. At the close of the war he removed to St. John, New Brunswick, and was one of the original grantees of that city.

<sup>2</sup> James Deas, a perukemaker and hairdresser, residing in the lower part of Broad street.

<sup>3</sup> John De Lancey, son of Peter De Lancey, of Westchester county, and his successor in the General Assembly as representative of the borough of Westchester, which office he retained until 1775, when he was elected a member of the Provincial Congress.

<sup>4</sup> A mistake for Jas. De Lancey, Jun., who was a younger brother of the John De Lancey mentioned, and a cousin of James De Lancey, Sr. (the eldest son of Lt. Gov. De Lancey), who was in England when this petition was signed. There was no John De Lancey, Jun., then living.

<sup>5</sup> Oliver De Lancey was a brigadier-general in the British service, and died in Beverly, Yorkshire, England, in 1785, aged sixty-eight years.

<sup>6</sup> James Desbrosses, doing business "at the Ship-yards," in the vicinity of Catharine street, East River.

<sup>7</sup> The Desbrosses were well known merchants before, during, and after, the war.

<sup>8</sup> David Devoore had been a miller doing business near the Kissing Bridge, which spanned "Devoore's mill-stream." He is said to have built "Cato's" hotel.

<sup>9</sup> John Dickeman, alderman of the Out Ward of the city.

<sup>10</sup> Edward Doughty, an unlicensed liquor dealer on Whitehall Dock.

<sup>11</sup> Matthew Douglass, one of the firm of Douglass and Van Tuyl, unlicensed dealers in liquors at retail on the corner opposite the Fly Market (*foot of Maiden Lane*).

William Eames, Edward Eastman, Daniel Ebbets, Christian Eggert, Samuel Ellis (2), William Ellison,<sup>a</sup> Francis Elsworth, Benj<sup>a</sup> English, James Ettridge.

George Fach, Alex' Fairlie, Samuel Falkenhan, Edmund Fanning,<sup>1</sup> John Faulkner, David Fenton, Robert Fenton, Dennis Ferguson, Duncan Ferguson, James Ferguson, Jn<sup>a</sup> Adam Finch (2), Walter Fitz Gerald, John Fleming (3), James Fletcher, Michael Flin, James Flynn, George Folliot,<sup>2</sup> Alex' Forbes, Robert Fordham, Daniel Forshee, Henry Forster, John Forsyth, Alexander Fortune, William Fortune, George Fowler, John Fowler<sup>3</sup>, Samuel Franklin, Walter Franklin,<sup>b</sup> Lovis Frauzers, Alexander Fraser, Walter Frazer, Ab<sup>a</sup> Fruge, Daniel Fueter, David Fuhrle, Michael Fung.

Christian Gabble, Alex' Galbreath, John Gallaudett,<sup>c</sup> David Ganner, Francis Grantz, Peter Garrabrance, Jun., Frederick Bonn Garten, Matthew Gaskin, Archibald Gatfield,<sup>d</sup> Benjamin Gatfield, Nicholaus Gaub, Andrew Gautier,<sup>e</sup> Da-

<sup>a</sup> William Ellison, a large landholder and merchant at New Windsor, Orange County.

<sup>1</sup> Colonel Edmund Fanning, secretary and son-in-law of Governor William Tryon. He was originally from North Carolina, where he was exceedingly unpopular; and it is probable that Tryon's administration of that government was seriously impaired from that cause. In 1777, he raised a corps of loyalists, which was called the "Associated Refugees," and sometimes "The King's American Regiment," of which he had the command; and it was somewhat celebrated in the Southern campaigns of 1780-1, for its spirited conduct in the field. At the close of the war he retired to Nova Scotia, where he became lieutenant-governor; and, in 1786, he was transferred, in the same capacity, to Prince Edward's Island, where he remained until 1805. The time of his death is not recorded.

<sup>2</sup> George Folliot was a merchant transacting an extensive business in this city. He was elected a member of the Provincial Congress, in 1775, but declined; and he also declined to serve as a member of the "Committee of One Hundred," to which he had been elected.

<sup>3</sup> John Fowler, residing at "Little Bloomingdale."

<sup>b</sup> The famous Quaker merchant who built the great house in Franklin Square, father-in-law of De Witt Clinton and George Clinton (De Witt's brother), and whose widow subsequently married Samuel Osgood.

<sup>c</sup> Ancestor of the Gallaudets, noted for the instruction of the deaf and dumb.

<sup>d</sup> Archibald Gatfield, an unlicensed dealer of liquors in Slaughter-house street.

<sup>e</sup> Andrew Gautier, alderman of the Dock Ward.

vid Geler, Francois Gerard, William Giffing, Leonard Gil-dert, Thomas Gillespie, Richard Glebets, John Glover, William Goddington, Ab<sup>m</sup> Gomez, Moses Gomez, Jun., Peter Goodman, Lodwig Gounzer, Abraham Gouverneur, James Govers, Peter Graff, Edward Grant, John Grant (2), Thomas Graves, Andrew Gray, John Gray, Wm. Gray, David Gregg,<sup>1</sup> Jean George Gressand, John Grierson, Robert Griffith, John Griffiths,<sup>2</sup> John Grigg,<sup>3</sup> Thomas Grigg, D. Grim,<sup>4</sup> Jacob Grim, Peter Grim, Charles Grimsley, Jacob Grindlemeyer, Thomas Grisdall, Hendrick Gulick.

Frederick Haas, George Haassis, Mathias Haerlman, John Halden, Edward Hall, Henry Hall, Peter Hall,<sup>5</sup> James Hal-latt,<sup>6</sup> Samuel Hallet,<sup>7</sup> Daniel Halsted, John Hamilton<sup>8</sup> (2), Joseph Handforth, Ab<sup>m</sup> Hangworth, William Hanna, Gost. Hans, Mecil Hansen, Martin Hanshee, Johannes Harbell, John Hardenburgh,<sup>9</sup> David Hardley, Lawrance Hardman, John Harris, Richard Harris (2), Thomas Harrison, Charles Hart, George Hartman, Lawrance Hartwick, Charles Haus, Thomas Hautzman, William Hauxhurst,<sup>10</sup> Joseph Haviland, William Hay, Barrak Hays, David Hays, Thomas Haywood, Jacob Heartz, Geo. Heath, Fred. Wm. Hecht,<sup>11</sup> Isaac Hedges,

<sup>1</sup> David Gregg, probably one of the celebrated firm of Gregg, Cunningham & Co., merchants, transacting a very heavy business with foreign countries.

<sup>2</sup> John Griffiths, "Master of the Port."

<sup>3</sup> John Grigg, a retailer of liquors in Sloat alley. At a subsequent period he appears to have become a tallow-chandler, tanner, etc., in which business he became insolvent in 1783.

<sup>4</sup> David Grim, the antiquarian tavern keeper, so well known and gratefully remembered in New York by every student of *local* history. He formerly kept "the Three Tuns," in Chapel street; but, in 1776, he was a retailer in William street.

<sup>5</sup> Peter Hall, a retailer of liquors in Peck slip.

<sup>6</sup> Hallets, of Hallets Cove.

<sup>7</sup> John Hamilton, agent, probably a refugee from South Carolina, who had accepted military appointment under the crown. *Vide* Butler's statement, Tomlin-son MSS.

<sup>8</sup> John Hardenbrook, assistant alderman of the Out Ward of the city.

<sup>9</sup> William Hawxurst, a merchant dealing in pig-iron, anchors, pot-ash, kettles, negro-wenches and children, horses, etc. He was a Long Islander.

<sup>10</sup> Fred. Wm. Hecht, a German, residing in Queen (now Pearl) street, who had been commissioned by Governor Tryon as a captain in the loyalist service, as early as October, 1776.

Valten Hesner, Andrew Heister, John Henderson, Uriah Hendricks,<sup>a</sup> William Hervey, John Jacob Hetzell, James Hewett, Garrit Heyer, Daniel Hick, Whitehead Hicks,<sup>1</sup> Thomas Hiett, Joseph Hildrith, John Hillman, Michael Hittsteam, John Hillyar, Joseph Hitchcock, Johannis Hoffman, Michael Hoffman, James Holden,<sup>2</sup> Peter Holmes, James Hope, Rinier Hopper, Yalless Hopper, Thomas Hopwood, Robert Horne, James Horner,<sup>3</sup> Thomas Horsfield, Daniel Horsmanden,<sup>4</sup> Jacob Hertz, Alexander Hosack,<sup>5</sup> Bernard Mich<sup>6</sup> Houseal,<sup>6</sup> Robert Howard, James Hoy, George Hubnors, Benjamin Hugget,<sup>7</sup> Richard Hughes, Thomas Hughes, Robert Hull,<sup>8</sup> Joseph Hunt, John Fred. Huntill, Diederick Hyer.

James Imbrie, Charles Inglis,<sup>9</sup> Levy Israel.

Daniel Jacobs, John Johnson, Robert Johnson,<sup>10</sup> David Jones, John Jones<sup>11</sup> (2), Samuel Jones,<sup>b</sup> William Jones.

<sup>a</sup> The Hendrickses, the Nathans, and the Gomezes, all of whose names are in this list, were and still are, Portuguese Jews of the highest class and respectability as New York merchants.

<sup>1</sup> Whitehead Hicks, mayor of the city of New York, from 1766 to 1776, when he was appointed a Justice of the Supreme Court.

<sup>2</sup> John Holden, a retailer of liquors near the Upper Barracks, in the upper part of the Park.

<sup>3</sup> James Horner, an unlicensed retailer of liquors in French-church (*now Pine*) street, near Broadway.

<sup>4</sup> Daniel Horsmanden was the chief justice of the colony. His wife was Mary, daughter of Colonel Abraham De Peyster, and widow of Rev. Mr. Vesey, rector of Trinity Church, New York; and he died at Flatbush, Long Island, September 23d, 1778, aged eighty-eight years.

<sup>5</sup> Alexander Hosack, an unlicensed retailer of liquors in Dey street.

<sup>6</sup> Rev. Bernard Michael Houseall, V. D. M., senior pastor of the Lutheran German Church.

<sup>7</sup> Benjamin Huggett, a grocer and dealer in liquors, and assistant alderman of the North Ward, living and doing business on the corner of Nassau and Fair (*now Fulton*) street.

<sup>8</sup> Robert Hull, at "Hull's Tavern," Broadway above Trinity Church.

<sup>9</sup> Rev. Charles Inglis, assistant rector of Trinity Church, New York. He succeeded Rev. Dr. Auchmuty, as rector; but, in 1783, he was obliged to resign and take refuge in Nova Scotia, and subsequently, he was appointed Lord Bishop of that colony. In 1809, he was a member of the Council of the Province; and he died in 1816, aged eighty-two.

<sup>10</sup> Robert Johnson, an unlicensed retailer of liquors, in Ferry street.

<sup>11</sup> John Jones, M. D., professor of surgery in King's (*Columbia*) College.

<sup>b</sup> Samuel Jones, "Father of the New York Bar," subsequently first Comptroller of the *State* of New York.

Christian Kauff, John Keen, Andrew Keer, John Kennedy, Jn<sup>o</sup> T. Kempe,<sup>1</sup> Johannis Keser, Aaron Keyser, Stephen Kibble, James Killmaster, Linus King, John Kingston, Joseph Kirby, Benj<sup>a</sup> Kissam,<sup>2</sup> Philip Kissick,<sup>3</sup> George Klein, John Klein,<sup>4</sup> Jacob Klinck, John C. Knapp,<sup>5</sup> Jacob Kneht, Ab<sup>m</sup> Knickerbacker, John Knoblock, Robert Knox.

Jost Lachman, Nicholas Lackman, William La Croix, Stephen Ludlam, John Lagear, Thomas Lapwick, Thomas Lamb, Albert Lambkin, Henry Law, John Lawrence, Stephen Leach, James Leadbelter, John Leake, John Legar, Joseph Lee, John Lell, Garret Lent, James Leonard, Robert Leonard, Alexander Leslie,<sup>6</sup> James Lesly, Michael Lesser, David Levison, Christopher Levissen, John Lewis (2), Patrick Leyburn, Daniel Lightfoot, Barnard Lin, Charles Lindaman, Stroud Cotton Lincoln, Johannis Lindner, Philip Linzie, Leonard Lispenard,<sup>7</sup> William Litch, George Little, John Lockhart, John Lockman, John Logan, Christopher Long, James Long, John Long, Charles Lorrillard,<sup>8</sup> Lambert Losije, William Loughead, James Love, William Lowndes, Thomas Lowrey,<sup>9</sup> William Lowrie, John Andrew, Luccam, Henry Ludlam, Daniel Ludlow, Geo. D. Ludlow,<sup>10</sup>

<sup>1</sup> John Tabor Kempe was the attorney-general of the province.

<sup>2</sup> Benjamin Kissam, a leading lawyer in the city of New York, under whom Lindley Murray, the grammarian, and John Jay, the chief justice of the United States, read law.

<sup>3</sup> Philip Kissick, vintner and distiller, at the upper end of Great Queen street (*now Pearl street*), where his stock of "Home-spun Brandy and Gin, very little inferior to French Brandy and Holland Gin," together with an extensive assortment of wines, liquors, porter, and cider, were offered for sale.

<sup>4</sup> John Klyne, a baker, who at that time lodged with Mr. Daniel Mesnard, Duke (*now Stone*) street.

<sup>5</sup> John Coghill Knapp, a notorious pettifogger—a convict who had fled from England for his own benefit—who was doing business on the corner of Broad street and Verlattenberg Hill.

<sup>6</sup> Alexander Leslie, A. M., head master of the grammar-school of King's (*Columbia*) College. There was, also, an Alexander Leslie, who was an unlicensed retailer of liquors, near the Barracks (*Park*) in Chatham street.

<sup>7</sup> Of Lispenard's Meadows, an estate at foot of present Canal Street.

<sup>8</sup> An ancestor of the snuff and tobacco merchants of New York.

<sup>9</sup> Thomas Lowry, an unlicensed retailer of liquors, opposite Oswego market, in Broadway.

<sup>10</sup> George Duncan Ludlow was one of the justices of the Supreme Court of the

Thomas Gray Luebe, Thomas Lupton, Philip Lydig,<sup>a</sup>  
Thomas Lynch.<sup>1</sup>

W<sup>m</sup> McBride,<sup>2</sup> James McCandess, Thomas McCarty, Edward McCollom, Patrick McConnegall, John McCormick, Archibald McDonald,<sup>3</sup> John McDonald, Benjamin McDowal, Hugh McDowll, Charles M<sup>e</sup>Evers,<sup>b</sup> John M<sup>e</sup>Fall, Dougall M<sup>e</sup>Farlane, John M<sup>e</sup>Gillaray, Hugh M<sup>e</sup>Intire, Patrick M<sup>e</sup>Kay, John M<sup>e</sup>Kenzie, John M<sup>e</sup>Kinlay, Peter M<sup>e</sup>Lean, Neil M<sup>e</sup>Leod, John M<sup>e</sup>Manomy, William M<sup>e</sup>Nabbs, Daniel M<sup>e</sup>Onnully, Donald M<sup>e</sup>Pherson, Dougald M<sup>e</sup>Pherson, John M<sup>e</sup>Pherson,<sup>c</sup> Thomas M<sup>e</sup>Williams, John Machet, Peter Machet, John Maffet, Thomas Mahan, Abraham Malunen, Peter Mange, Moses Marden,<sup>d</sup> Jones Marle, Joakim Marr, John Marshall<sup>e</sup> (2), Nathaniel Marston,<sup>f</sup> Henry Marx, John Maskelyn, Thomas Mason,<sup>g</sup> Matthew Maugere, James Maxwell, Thomas Medanel, John Michalsal, John Middlemass, Peter Middleton,<sup>h</sup> James Mildrum,<sup>i</sup> David Henry Millar, Charles Miller, Hugh Miller, Jacob Miller, John Miller, Joshua Miller, Michael Miller, Philip Miller, Robert Miller, Thomas Miller, Sam<sup>j</sup> Millson,

Province. He resided at Hempstead, Long Island, and suffered greatly from the incursions of the Americans. In 1780, he was appointed master of the rolls, and superintendent of the police on Long Island; and having taken refuge in New Brunswick, in 1783, he was a member of the first council in that province. As the senior member of that body, he administered the government, *ad interim*; and he was the first chief justice of the Supreme Court of that colony. He died at Fredericton, February 12, 1808.

<sup>a</sup> Ancestor of the family now of West Farms, Westchester County.

<sup>1</sup> Thomas Lynch, a dealer in liquors and negroes, in Duke (now Stone) street.

<sup>2</sup> William McBride, an unlicensed retailer of liquors, in Cooper's street, near Lupton's Wharf.

<sup>3</sup> Archibald McDonald, a licensed retailer of liquors, in Church street.

<sup>b</sup> Of the well-known firm of merchants.

<sup>c</sup> John McPherson, a retailer of liquors doing business in Broadway.

<sup>d</sup> Moses Mardin, an unlicensed retailer of liquors, in Broadway, opposite the Bowling Green.

<sup>e</sup> John Marshall, an unlicensed retailer of liquors, in Old Dutch Church street (*Exchange Pl.*).

<sup>f</sup> A relation of the Phillipses and Gouverneurs.

<sup>g</sup> Thomas Mason, a retailer of liquors, in Broadway, corner of Beaver street.

<sup>h</sup> Dr. Peter Middleton, professor of the theory of medicine and of *materia medica* in King's (*Columbia*) College.

<sup>j</sup> James Maldrem, an unlicensed retailer of liquors, "opposite the Slip Market."

John Minuss, James Mitchell, Viner Mitchell, Jacob Moell, William Mook, Joseph Moon, Ab<sup>m</sup> Moor, Blusty Moor, Benj<sup>a</sup> Moore,<sup>1</sup> Boltis Moore, Henry Moore, James Moore, Jeremiah Moore, John Moore<sup>2</sup> (3), James Moran,<sup>3</sup> Philip Morgan, George Morrel, Martin Morris, Charles Morse, Isaac Mott, William Mucklevain, Jeremiah Mullar, Charles Muller, Frederick Muller, George Muller, John God. Muller, Samuel Murgiffroyd, Philip Murphy, Lindley Murray,<sup>4</sup> John Murray, Jun., Robert Murray,<sup>4</sup> George Myer, James Myer, Samuel Myers, George Myir.

Michael Nailor, Samuel Naroy, David Nathan, David Navaro, James Neaven, Caspar Nestle, Samuel Nichols, Edward Nicoll,<sup>b</sup> William Niers, John Nixon, John Noblit, William Norman, Benj<sup>a</sup> Norwood, John Norwood, Vanderclife Norwood, Valentine Nutter.<sup>5</sup>

Garret Oaks,<sup>6</sup> Henry O'Brien, Benj<sup>a</sup> Ogden, John Ogilvie, Alexander Ogsbury, John O'Neill, Joseph Orchard, Philip Oward, Jacob Ott, Joseph Owl, Walter Owl.

Aaron Packman, William Pagan, Hayes Pannell, Francis Panton, William Parcells, Thomas Parrisiens, John Pasca, William Patton, Thomas Paul, James O. Pava, George Peitsch, Gilbert Pell,<sup>c</sup> Richard Penny, Henry W. Perry, Mervin Perry,<sup>7</sup> Harry Peters, Hugh Philips, Adolph. Phil-

<sup>1</sup> Rev. Benjamin Moore, assistant rector of Trinity Church, New York, succeeded Dr. Inglis, as rector, and subsequently became bishop of the diocese. He died February 27, 1816.

<sup>2</sup> John Moore, deputy collector of customs at this port.

<sup>3</sup> James Moran was first clerk in the custom-house in this city.

<sup>4</sup> The grammarian. These Murrays are the family of Quaker merchants from whom "Inclenberg" derives its modern name of "Murray Hill." They were loyal throughout the war.

<sup>5</sup> Robert Murray, a Friend, and head of the house of Murray, Sansom & Co., among the leading merchants of Colonial New York. His place of business was in Queen (*Pearl*) street, between Beckman and Burling Slips; and his country residence on Murray Hill. (*Vide* page 29.)

<sup>6</sup> Of the old Long Island family of this name.

<sup>7</sup> Valentine Nutter, bookseller and stationer, opposite the coffee-house in Wall street, where he remained until the close of the war.

<sup>8</sup> Garret Oaks, a retailer of liquors doing business on Cruger's Wharf (*between Old and Coenties Slips*). <sup>c</sup> Of Pelham Manor.

<sup>9</sup> Mervin Perry, "Repeating and Plain Watch and Clock maker, from London,"

ipse, Fred<sup>k</sup> Philipse,<sup>a</sup> William Poole, James Potter, Jacob Pozer,<sup>1</sup> Thomas Price, David Provoost, David Provost, Capper Pryer, Edward Pryor, John Philip Puntzius.

Benjamin Quackenboss, Luke C. Quick, Thomas Quill.

John Randik r, Rem. Rapelje,<sup>2</sup> John Rapp, Frederick Ransier, Henry Reden, Stephen Reeves,<sup>3</sup> George Reicble, Nich<sup>o</sup> Remind, George Remsen,<sup>4</sup> John A. Remsen, Jacob Resler, Fred<sup>k</sup> Rhynlander,<sup>5</sup> Philip Rhynlander, Henry Rick-<sup>r</sup>, David Rider, John Risler, John Ritter, J. Roberts,<sup>6</sup> John Robertson, Ezekiel Robins, Jarvis Roebuck, James Rogers,<sup>7</sup> Godfred Rottonour, Cornelius Romme, Alexander Ross (2), James Ross, Robert Ross, Jasper Ruckell, William Ruddle, Fred<sup>k</sup> Ruger, Jacob Ruoisier, Cornelius Ryan, John Rykeman.

John Sackett, John Samler, Thomas Sample, Sam. Samuel, Jacob Sansar, John Saunders, Nicholas Scande, John Scandlin, Coenradt Schulze, Christian Schutz, Adam Schumburg,<sup>8</sup> Tho<sup>s</sup> Scorfield,<sup>9</sup> William Scott,<sup>10</sup> J. Seagroove, Joshua Seaman, James Seamans, Levy Seamans, Casper Semler, Jacob Shafer, George Shaw, James Shaw, John Shaw,<sup>11</sup> John Sheppherd, Jun., E. G. Shewkirk,<sup>b</sup> Daniel

at the sign of "the Dial," six doors below Gaine's printing office, the same side the way (*Pearl street*, eight doors below *Wall street*).

<sup>a</sup> Of the Philipses, of Philipseburgh.

<sup>1</sup> Jacob Pozer, proprietor of "The Philadelphia Stage house," in White Hall.

<sup>2</sup> Rem Rapelje, whose punishment inflicted by the people on the twelfth of June, 1770, has been described in Peter Elting's letter to Captain Varick, page 97.

<sup>3</sup> Stephen Reeves, formerly one of the firm of Whitehouse & Reeve, jewelers, doing business in Queen (*Pearl*) street, near the corner of Burling Slip.

<sup>4</sup> George Remsen, an unlicensed retailer of liquors, in Water street, near the Exchange Bridge (*Broad street*).

<sup>5</sup> Frederic Rhinelander, a very heavy importer of crockery and other merchandise, who transacted business at Burling Slip; and in 1783, transacted business at No. 168 Water street.

<sup>6</sup> John Roberts, Esq., high sheriff of the city and county of New York.

<sup>7</sup> James Rogers, an unlicensed retailer of liquors, in Queen (*Pearl*) street.

<sup>8</sup> Adam Shamburg, an unlicensed dealer in liquors, in Chatham street.

<sup>9</sup> Thomas Scorfield, a licensed retailer of liquors, "back of Henry White's."

<sup>10</sup> William Scott, a deputy sheriff of the county of New York. He was a retailer of liquors on Broadway, near the Oswego market.

<sup>11</sup> John Shaw, a jeweller doing business at the sign of "the Crown," in Nassau street, near John street.

<sup>b</sup> The Moravian clergyman of New York.

Shier, Henry Shier, Martin Shier, John Shoals,<sup>a</sup> Abraham Shotwell, John Shouldis, Christopher Shundel, Rich<sup>d</sup> Sibley, Henry Simmerman, Joseph Simmons, George Simpson, Sam<sup>l</sup> Sp. Skinner, John Slidell, Joshua Slidell,<sup>b</sup> John Sloan, John Smart, Walter Smedlee, George Smelzell, Albert Smith, Barnardus Smith, Christopher Smith, Johannis Smith, John Smith,<sup>1</sup> Jn<sup>o</sup> Sam. Smith, Rich<sup>d</sup> Smith, Robert Smith, Thomas Smith,<sup>2</sup> William Smith (3), John Snell,<sup>3</sup> Randolph Snowden, Henry Sobouvon, Isaac Solomons, Teunis Somerindicke,<sup>c</sup> Peter Sparling, William Spenns, John Spers, Hugh Spier, John Spier, Frederick Sprick, Gregory Sprugall, Hugh Sproat, Thomas Sproat, Jacob Spury, Melcher Stahl, Daniel Stahalmann, George Stanton,<sup>d</sup> Michael Stavener, John Steel, Robert Steel, Wm. Stepple, James Stevenson, George Stewart,<sup>e</sup> Joseph Steyner, John Stiles, Thomas Stilwell, Jan. Stockholm, Nicholas Stompf, Philip Stonestreet, Benjamin Stout,<sup>f</sup> Benjamin Stout, Jun., John B. Stout, Richard Stout, Robert Stout, James Striker, Joseph Stringham, Johannis Stroitter, James Stuart, Francis Stuck, P. Stuyvesant,<sup>g</sup> Caleb Sutton, William Sutton,<sup>h</sup> Godfred Swan, Will<sup>m</sup> Swan, Jun<sup>i</sup>, Christopher Sweedland, John Swere, Philip Sykes.

William Tailer, James Taylor, Willet Taylor, William Taylor, David Thomas, Henry Thomas, Walter Thomas,

<sup>a</sup> Of Queen's county.

<sup>b</sup> Soap and candle makers. Ancestors of John Slidell, Confederate minister, captured on the Trent in the late Southern rebellion.

<sup>c</sup> John Smith, a warden of the port.

<sup>d</sup> Thomas Smith, a merchant doing business in Hanover square.

<sup>e</sup> John Snell, an unlicensed retailer of liquors, opposite the ship-yards, in the vicinity of our Market street.

<sup>f</sup> A small farmer, a tenant of a small piece of James De Lancey's land in the Bowery.

<sup>g</sup> A carpenter and builder before, during, and after the war.

<sup>h</sup> James Stewart, a dealer in dry goods, opposite Frederic Rhinelander's, in Burling Slip.

<sup>i</sup> Benjamin Stout, a wholesale dealer in wines, groceries, dye-woods, etc., doing business in Queen (*Pearl*) street, near Peck Slip.

<sup>•</sup> Peter Stuyvesant, head of the Stuyvesant family, owner of the Bowery estate, noted for his hospitality to the British officers during the war. He continued in the city throughout as long as he lived.

<sup>†</sup> Farmer of Mamaroneck, Westchester County.

David Thompson, George Thompson, John Thompson (2). Peter Thompson, Sam' Thopson, Fred. Thonnaird, Albertus Tiebout, Robert Till, James Toffie, William Tongue,<sup>1</sup> Daniel Tooker, Silas Totten, George Trail, Jonathan Treemain, Francis Trevillian,<sup>2</sup> Tobias Trim, James Tucker, Jonathan Twene, Jacob Tyler.

Harman Utt, Benj<sup>a</sup> Underhill, Nicodemus Ungerar, John Christopher Urmhauster, George Urst, Henry Ustick,<sup>3</sup> W<sup>m</sup> Ustick.

Fanconier Vallean, John Vance, Aug<sup>t</sup> Van Cortlandt,<sup>4</sup> Corn<sup>r</sup> V. D. Bergh, Mindert Van Every, Jacobus Van Nordan,<sup>4</sup> Jacobus Van Nordan, Jun., Andrew Van Tuyl, John Van Norst, Wynandt Van Zandt,<sup>5</sup> Thomas Vardill,<sup>6</sup> Thomas Vassie, William Vermilye, Philip Verner.

W<sup>m</sup> Waddell,<sup>7</sup> Ab<sup>m</sup> Wagg, John Wagna, George Walf, John Walker<sup>a</sup> (2), George Wall, John Walmsley, Jacob Walton,<sup>8</sup> Thomas Warner,<sup>10</sup> William Waterman, Jacob Watson<sup>11</sup>

<sup>1</sup> William Tongue, a general broker and auctioneer, doing business opposite to Hugh Gaine's bookstore, Hanover square, next door but one from Wall street.

<sup>2</sup> Francis Traveller (*Trevillian*), an unlicensed liquor dealer in Murray street.

<sup>3</sup> Henry Ustick, one of the firm of William and Henry Ustick, importers, etc., whose infidelity to the non-importation agreement had excited the indignation of the Sons of Liberty, April 6, 1775. Henry was also the proprietor of a retail liquor store on Pottbaker's Hill (*Liberty, near Nassau*).

<sup>4</sup> Of Cortlandt House, Yonkers, clerk of the city corporation before and during the war. Died at Yonkers in 1824.

<sup>5</sup> Jacob Van Orden, a licensed retailer of liquors, opposite the Bear (*Washington*) Market.

<sup>6</sup> Wynandt Van Zandt, once of the firm of Van Zandts and Keteltas, importers.

<sup>7</sup> Thomas Vardell, a warden of the port.

<sup>8</sup> William Waddeil, alderman of the North Ward, residing in King (*Pine*) street.

<sup>9</sup> John Walker, a licensed retailer of liquors, near the Breastwork, in the lower part of Broadway.

<sup>10</sup> Jacob Walton, one of the firm of William and Jacob Walton & Co., importers. He was a member of the General Assembly from this city; and one of the most influential citizens of his day. His wife, a daughter of Hon. Henry Cruger, died on the 1<sup>st</sup> August, 1782; and eleven days after, he followed her.

<sup>11</sup> Thomas Warner, an unlicensed retailer of liquors at Leary Slip, near the Ferry stairs.

<sup>12</sup> Jacob Watson, a merchant dealing in pig-iron, anchors, pot-ash kettles, negro wenches and children, horses, etc.

(2), John Watts,<sup>a</sup> James Wear, William Weaver, Jun., James Webb, William Webb, Arnold Webbers, Jacob Webbers, Philip Webbers, Michael Weber, Edward Webster, Johannis Weiss, James Wells, Oliver Wells, George Welsh, Thomas Welsh,<sup>1</sup> Christian Wernir, Evert Wessels, Gilbert Wessells,<sup>2</sup> Jno. Wetherhead,<sup>3</sup> Thomas Whaley, Charles White, Henry White,<sup>4</sup> Robert White, Thomas White,<sup>5</sup> William White, John Whitman, George Wighton, Thomas Wilkes, Jacob Wilkins,<sup>6</sup> Robert Wilkinson, John Michael Will, Abraham Willet, George William, Benjamin Williams, William Williams,<sup>7</sup> George Willis, Jun., Fred<sup>x</sup> Windish, George Winfield, William Winterton, Jn<sup>o</sup> Witterhorn, George Wittmer, John Witzell, John Woods, William Wragg, Thomas Wright, George Wyley.

Ab<sup>m</sup> Young, Hamilton Young,<sup>8</sup> John Young,<sup>9</sup>

George Zindall, Lodwick [ ? ] The following names, not in the printed volume, are in the MS. copy above mentioned : Michael Havener, George Miller, B. Moore, Michael Penny, Jeronimus A. Remsen, Jacob Risler, John Legar, Jost Sachman, John Watson, Johannis Willet.

We William Waddell, one of the Alderman of the City & County of New York; Esq<sup>r</sup>. and James Downes of the said City, Gentlemen, Do hereby certify that we attended, the

<sup>a</sup> Of the Council of the Province.

<sup>1</sup> Thomas Welsh, a licensed retailer of liquors, opposite the Fly Market.

<sup>2</sup> Gilbert Wessels, a resident of Pearl street

<sup>3</sup> John Wetherhead was an importer in King street.

<sup>4</sup> Henry White was a member of the Council. In 1769 he bought and lived in the De Peyster house, in Pearl street opposite Cedar, and was a brother-in-law of Augustus Van Cortlandt, above named. He died in London, 23d December, 1786, and his widow, Mrs. Eve White, at her residence, No. 11 Broadway, N. Y., 19th August, 1836.

<sup>5</sup> Thomas White, an unlicensed retailer of liquors in the Bowery lane.

<sup>6</sup> Jacob Wilkins, a dealer in hardware near Coenties Market.

<sup>7</sup> William Williams, a licensed retailer of liquors in the Bowery lane.

<sup>8</sup> Hamilton Young, dealer in crockery, dry goods, pork, gold and silver buttons, etc., in Little Dock (*Water*) street, between the Coffee-house (*Wall street*) and Old Slip.

<sup>9</sup> John Young, a wholesale dealer in groceries, silks, etc., doing business in Smith (*William*) street.

signing of the foregoing Representation, & that the Subscribers hereunto attended Voluntarily, as Witness our hands, this 24<sup>th</sup> day of October, One Thousand, seven hundred, & seventy six,

WILLIAM WADDELL  
JAMES DOWNES

ADDRESS TO GOVERNOR TRYON.

To His Excellency W<sup>m</sup> Tryon Esq<sup>r</sup>, Captain General and Governor in Chief in, and over, the province of New York, and the territories depending thereon in America Chancellor & Vice Admiral of the Same—

We the Inhabitants of the City & County of New York, beg leave to Congratulate your Excellency on your return to the Capital of your Government; and to assure you, that we feel the sincerest Joy on this happy Event, which opens a Prospect that we shall once more experience the Blessings of Peace and Security under his Majesty's auspicious Government & Protection—blessings which we formerly enjoyed under your Excellency's mild Administration, and which we Ardently wish to have renewed.—

Persevering in our Loyalty and Unshaken attachment to our Gracious Sovereign, in this time of Distress and trial, and anxious to testify our affection for him, we have embraced the Earliest Opportunity to Petition the Kings Commissioners they would restore this City & County to his Majestys Peace. Although many of the most respectable Citizens, and a much greater number of the Inferior Classes, have been driven Off by the Calamities of War, or sent Prisoners to new England, and other distant parts; yet we hope that the numbers still remaining, and who have voluntarily subscribed, may be deemed sufficient to intitle this district to his Majesty's grace —whilst the sufferings which our absent Fellow Citizens undergo for the Royal Cause plead in their behalf with the Commissioners From whose well known humanity, benevolence, and enlarged Sentiments, we have the most flattering Expectations. To your Excellency we naturally look up for Assistance; we therefore request, that you would be pleased

to present our Petition to the Commissioners, and otherwise Exert yourself, that the Prayer of it may be granted ; as it is our present desire, and what we Esteem the Greatest earthly Felicity, to remain Subjects of the British Government in union with the Parent State

Signed by Desire, and in behalf of the  
Inhabitants by

DANIEL HORSMANDEN

NEW YORK Oct<sup>r</sup> 16<sup>th</sup>, 1776

To which his Excellency was pleased to write the following Letter in answer

NEW YORK 25<sup>th</sup> October—1776.

Sir

The Address you deliver'd to me in behalf of the Inhabitants of the City & County of New York, cannot fail of being highly agreeable to me, as it was, accompanied, with a dutiful Petition & representation from them to the Kings Commissioners, for restoring peace to his Majestys Colonies—testifying their Loyalty, to our most Gracious Sovereign, professing a Zealous attachment to the british Constitution, and declaring the warmest desire, for a lasting union with the parent state.

Still solicitous as I am for the welfare of the Inhabitants of this Colony in General, and earnestly wishing for a restoration of Public Harmony, and the re-establishment of the ancient Constitutional authority of Government, I have cheerfully embraced the Opportunity of presenting this Day, the Address to Lord Howe, who was pleased to signify to me " he would take the earliest opportunity of communicating " with General Howe on the Occasion."

The Inhabitants may be assured I shall support their wishes with my best Endeavours, although the Completion of it must be left to the decision of his Majestys Commissioners, in whom the highest National confidence is reposed.

I am with regard

Sir, your most Obedient Servant

W<sup>m</sup> TRYON.

To the Hon<sup>ble</sup> Chief Justice Horsmanden.

## NOTE XVII.

THE PROCLAMATIONS OF THE BRITISH COMMANDERS ESTABLISHING THE SUPERINTENDENCY OF EXPORTS AND IMPORTS, AND THE MILITARY COURTS OF POLICE, AND OTHER MILITARY OFFICIALS IN THE CITY OF NEW YORK.

*Vol. II., pp. 120-127.*

THE different proclamations establishing the military courts of police and other offices, referred to in the seventh chapter, are the following :

Sir William Howe's proclamation appointing Andrew Elliot "Superintendent of all Imports and Exports to and from the Islands of New York, Long Island, and Staten Island," which was really a military appointment as Collector of the Customs, with enlarged powers and military authority, was dated 17th July, 1777, and on the 22d, Elliot gave notice that his office was opened "in Water street, in the house formerly occupied by John Martin."<sup>1</sup>

The proclamation establishing the Military Court of Police, from and after May 1, 1777, of which Elliott was the head, was issued previously.

On the 4th of May, 1778, General Daniel Jones, as commandant of the city, by proclamation made him "Superintendent-General" of the ordinary police of the city, with power to regulate the vicious, the poor, keep order at the markets, ferries, etc.<sup>2</sup>

Sir Guy Carleton's commissioners of 1783, to collect debts due to loyalists before he evacuated the city, mentioned on page 124, were appointed by his proclamation of the 16th of April, 1783. These commissioners were Robert Alexander, Isaac Low, Sampson S. Blowers, Daniel Cope, and William

<sup>1</sup> Gaine's New York Gazette and Weekly Mercury.

<sup>2</sup> Ibid.

Wanton. Their powers were confined to "all matters of Debt, Case, or Accounts of the value of *Ten Pounds, (currency)* or upwards."

Debts on bonds and mortgages were not within the terms of the proclamation, as the author states.<sup>1</sup>

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#### NOTE XVIII.

##### NAMES OF THE BRITISH BARRACK MASTERS, QUARTER- MASTERS, AND COMMISSARIES, IN NEW YORK DURING THE WAR.

*Vol. II., p. 142.*

IT may be of interest to know who were the "Barrack Masters, Quarter Masters, and Commissaries" of the British army in New York, whose arbitrary, fraudulent, and illegal acts are so vigorously denounced by the author, and whom he hoped to see punished in Westminster Hall.

The only ones the author mentions by name, in this work, are Brinley (whom he calls Brindly), Chamier, and Wier.

Official lists of the British Army were published in New York, during the war, in "Gaine's New York Almanac," and "Gaine's Universal Register, or American and British Calendar," preserved in the New York Historical Society's Library. These two publications together cover every year from 1774 to 1782 inclusive, except 1781, which is unfortunately missing. The lists for each year and the changes, which were few, are here given from 1776 to 1782.

The names are as follows :—

1776.

*Deputy Quarter Master General*, Major W<sup>m</sup> Sheriff.

*Asst. Q. Master Generals*, { Capt. Thomas Gamble,  
                                  } Capt. Fra. Hutchinson.

<sup>1</sup> *Ibid.*

*Barrack Master General*, Brig. James Robertson.  
*Deputy Pay Master General*, John Barrow, Esq.  
*Commissary of Stores and Provisions*, D. Chamier, Esq.

1777.

**None given for this year.**

1778.

*Quarter Master General, Sir William Erskine.*

*Deputy Quarter Masters Gen.* { Lieut. Col. William Sheriff,  
Major Bruen.

*Assistant Do.,* { Capt. Francis Hutchinson,  
Capt. William Handfield,  
Capt. Payne,  
Lieut. Robertson.

*Barrack Master General, Lieut. Colonel Clarke.*

*Commissary-General, Daniel Wier, Esq.*

*Deputy Do.*, { Mayor John Morrison, Esq.,  
Peter Paumier, Esq.,  
George Brinley, Esq.

*Assistant Do.*, { John Porteous, Esq.,  
James Christie, Esq.,  
John Crawford, Esq.,  
William Butler, Esq.,  
Frederick Wm. Hecht, Esq.,  
Gregory Townsend, Esq.,  
Roger Johnson, Esq.

*Auditor and Comptroller of Accounts, Daniel Chamier,  
Esq.*

*Inspector and Superintendent of his Majestys Provision Train, &c., &c.*, Francis R. Clarke, Esq.

*Commissary of Musters, James Pitcher, Esq.*

*Deputy do., Wm. Porter, and James Webb, Gents.*

*Deputy Judge Advocate, Stephen Payne Adye, Esq.*

*Ditto Provost Martial, William Cunningham.*

1779.

**The same as 1778, with the following changes:**

*Added to Depy. Q. Masters Gen., Henry Savage.*

*Added to the Assistants,* { Capt. W. Bailey,  
 Lieut. I. Piper,  
 Lieut. A. Durnford,  
 Lieut. W. Runkin,  
 Captain G. Dawson,  
 Mr. John Thompson,  
 Lieut. Gilfillen.

*Omitted from Assistants,* Capt. Payne.

*Added, Barrack Master,* John Page, Esq.

*Added, Assistant do.,* Lieut. D. Carleton.

### 1780.

Lord Cathcart succeeded Sir William Erskine as Quarter Master General *ad interim*. The rest remained as in 1778 and 1779, except that there also appear,

*Assistant Barrack Masters,* { Joseph Payne,  
 A. White,  
 T. Shreve.

*Assistant Depy. Judge Advocate,* Lieut. Blucke.

### 1781.

The volume for this year is missing.

### 1782.

Major General William Dalrymple was made Quarter Master General. The officers of his department appear in a different form from 1780, as follows; the other officials substantially as they were in 1780.

|  |   |
|--|---|
| <i>Quarter Master General,</i>                   | Major Gen. William Dalrymple.   |
| <i>Deputy Quarter Masters General,</i>           | { Maj. Henry Bruen, <i>New York</i> ,<br>Maj. Henry Savage, <i>Europe</i> ,<br>Maj. Ar. Robertson, <i>New York</i> ,<br>Capt. J. McKnum, <i>S. Carolina</i> ,<br>Maj. Wm. Handfield, <i>Halifax</i> .   |
| <i>Assistant Deputy Quarter Masters General,</i> | { Lt. Andrew Durnford, <i>Georgia</i> ,<br>Capt. George Dawson, <i>New York</i> ,<br>Lt. William Ranken, <i>Southward</i> ,<br>Capt. Thos. Gilfillen, <i>New York</i> ,<br>Lieut. Peter Purdon, <i>New York</i> ,<br>Capt. W. Armstrong, <i>New York</i> ,<br>Lt. George Stewart, <i>New York</i> ,<br>Lt. William Young. |

## NOTE XIX.

## THE "CITY FUNDS"—THEIR TREASURER.

*Vol. II., pp. 143-154.*

THE following facts are of interest in connection with the "City Funds," and the author's statements relating to them in the seventh chapter of this volume.

Andrew Elliot's order to pay the License fees into the City Funds, dated December 1, 1778,<sup>1</sup> is his first mention of them in a published official notice that I have been able to discover. Subsequently, many of his orders and notices appear in the newspapers of the day.

The Treasurer of the City Funds was named John Smyth, sometimes in the notices spelled "Smith." And he was also, strange to say, Sir Henry Clinton's Secretary.<sup>2</sup>

Very many of the proclamations and orders relating to these city funds and the revenues of the city, and the rates of charges payable for city dues, which are referred to by the author, taken from the newspapers during the war, are printed in the Historical Appendix of the New York City Corporation "Manual" for 1863, page 634, under the title of "New York City under British Military Rule."

It is interesting to compare with the author's statement, on page 143, of the annual amounts of the "City Funds," the "General Accounts" of Treasurer Smyth, giving his statement of what he received and paid out during the last six years of the war—five in number—which he published in Rivington's Gazette, at their respective dates given below. They are each headed, "General Account of the Receipts and Disbursements of all monies raised for the support of the Almshouse, other charitable purposes, and the exigencies of

<sup>1</sup> Gaine's New York Mercury.

<sup>2</sup> See General Pattison's letters, New York Historical Society Collections, 1875, pp. 370 and 387. Official lists in Gaine's Almanacs for 1780 and 1781. The assistant secretaries were Capt. Nathaniel Phillips, and Peter Russell, Esq.

the City of New York"—the last, a term of wide latitude—from and to the various dates they cover, and are all signed, "John Smyth, Treasurer and Collector." The following are the gross amounts of, and time covered by, each :

No. 1. From 1st November, 1777, to 30th April, 1782<sup>1</sup> (being four years and six months).

|                                  | £             | s. | d. |
|----------------------------------|---------------|----|----|
| Total received.....              | 63,419        | 3  | 6  |
| Total paid.....                  | 61,063        | 12 | 11 |
| Balance on 30th April, 1782..... | <u>63,419</u> | 3  | 6  |

?

The above is the only one of the five showing a balance in the Treasurer's hands. The remaining four are all made to balance evenly. They are as follows :

No. 2. From 1st May, 1782, to 14th April, 1783 (eleven and a half months).

Received, including above balance, and paid out..... 20,138, 17 9

No. 3. From 15th April, 1783, to August 20th, 1783, when the city funds, at General Robertson's departure, were put under direction of Brigadier-General Birch.<sup>2</sup>

Received and paid out..... 5,990 2 5

No. 4. From 21st August to 31st October, 1783 (2 months and 10 days), when, at the departure of Brigadier-General Birch, the City Funds were put under direction of Brigadier-General Musgrave.<sup>3</sup>

Received and paid out..... 2,148 6 10

No. 5. From 1st November, 1783, to 24th November, 1783, (the day before the evacuation, 24 days).<sup>4</sup>

Received and paid out..... 637 15 1

The whole amount of the five is..... 89,548 3 8

<sup>1</sup> Rivington's Royal Gazette, 1st June, 1782.

<sup>2</sup> " " " 30th Aug., 1783, contains No. 2 and No. 3 together.

<sup>3</sup> " " " 12th Nov., 1783.

<sup>4</sup> " New York Gazette, 29th Nov., 1783.

All these accounts are certified as audited ; the first two by order of General Robertson, the others by order of the generals above named, respectively, the auditor of the last four being James Gautier, and of the first " J. Shoemaker, Thos. Buchanan, and Lawrence Kortright, were Auditors."

The above accounts are in New York currency, and cover the last six years of the war, ending the very day before the evacuation.

In dollars, their whole amount is..... \$223,878 00<sup>1</sup>

For the same period (six years), at £30,000 per year, the annual amount of the City Funds, according to the author, the total amount would be £180,000 (\$450,000). It is clear, therefore, that if the information given to the author at the time, as he states, was correct, that Smyth's accounts show only a part of what was actually paid into the " City Funds."

A note to Rivington from Smyth, of 30th May, 1782, covering the first " general account," is prefixed to it, stating that he is " directed by Lieutenant-General Robertson to desire that you will publish [it] in your newspaper for the information of the public." The amount of rents collected in the first account is £35,281 3s. 1d.; and the total returned for rents collected, in all five accounts together, is £66,421 3s. 6d., about 176,052 dollars. In addition to accounts Nos. 2 and 3, John St. Clair, Secretary to the Commandant, appends a statement of £669 19s. 2d., received and paid over for " fines from different delinquents." The publication of these accounts was made about six weeks after Sir Guy Carleton's arrival in New York, and was one of the results of his " hostilities" against corruption, as the author calls them.

<sup>1</sup> Smyth's accounts in full were transcribed from Rivington's Gazette by Mr. Henry B. Dawson, and communicated by him through the Mayor to the Board of Aldermen of New York, on May 15, 1863, and published in the eighty-sixth volume of their " Proceedings," pp. 220 to 226, for April and May, 1863. Smyth's note to Rivington, and St. Clair's account of fines, do not appear in Mr. Dawson's communication.

## NOTE XX.

NAMES OF THE OFFICIALS OF THE MILITARY SUPERINTENDENCY OF EXPORTS AND IMPORTS IN NEW YORK —AND THOSE OF THE COURTS OF POLICE, THERE, AND ON LONG ISLAND.

*Vol. II., pp. 162-164.*

THE following lists showing who were the officials of the Superintendency of Exports and Imports established in New York by Sir William Howe's proclamation of 17th July, 1777, referred to in Note XVII., and those of the Courts of Police in New York, and on Long Island, are taken from "Gaine's Universal Register, or American and British Calendar for 1782." The volumes of this publication, 16 mos, for 1775, 1778, 1779, 1780, and 1782, are in the New York Historical Society's Library, and it is a curious fact, that of them all, that for 1782 is the *only* one in which these lists appear. The positions of the various persons, and the amounts of their pay, respectively, which the author gives in full on pages 162, 163, and 164, are not stated in Gaine's Register. The names are the same, with hardly an exception.

1782.

## SUPERINTENDENT'S DEPARTMENT.

OFFICE ESTABLISHED BY GENERAL SIR WILLIAM HOWE, K.  
B., &c., THE 17TH JULY, 1777.

Andrew Elliott, Esq., *Superintendent.*  
Lambert Moore, Esq., *1st. Deputy.*  
John Nugent, Esq., *2d ditto.*  
John Moore, Esq., *1st Clerk.*  
Mr. James Moran, *2d ditto.*  
Mr. Michael Kearney, *Searcher.*  
Mr. William Tyrell, *Warehouse Keeper.*

Mr. William Seton, *Assistant do.*  
 Mr. James Coggeshall, }  
 Mr. Anthony Kendele, } *Wharf officers.*  
 Thomas Bayeux, }  
 William Rescoria, } *Assistant do.*  
 Alexander Gardiner, *Wharf officer at Staten Island.*  
 John Hill, *Inspector at Brooklyn.*

1782.

## OFFICE OF POLICE.

Andrew Elliot, Esq., *Superintendent-General.*  
 David Matthews, Esq., *Mayor.*  
 William Selm, Esq., *Secretary to the Superintendent-General.*  
 Peter Ogden, Esq., *Secretary to the Police.*

## POLICE OF LONG ISLAND.

George D. Ludlow, *Superintendent-General.*  
 David Colden, *Assistant ditto.*  
 James Creighton, *Secretary.*

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## NOTE XXI.

ARNOLD'S VIRGINIA EXPEDITION OF 1781—TIME OF GENERAL PHILLIP'S ARRIVAL IN VIRGINIA—SIR HENRY CLINTON'S ACUTE PROVISION AGAINST POSSIBLE TREACHERY BY ARNOLD.

*Vol. II., pp. 177.*

ARNOLD arrived in Hampton Roads on the 30th of December, 1780, began his operations in January, 1781, and carried them on till March. General Phillips, whom Clinton sent with 2,000 men to support Arnold, arrived in Vir-

ginia on the 25th of March, 1781, and took the chief command. Their united operations began the 18th of April. Phillips was taken ill with a fever on the 2d of May, but reached and took possession of Petersburg on the 9th, and died there on the 13th. Arnold succeeded to the command.<sup>1</sup>

Cornwallis arrived with his army at Petersburg, from Carolina, and joined Arnold on the 20th of May.<sup>2</sup>

The author is therefore mistaken in the statement on page 174, that Phillips was sent to Virginia after Arnold's return to New York. The latter event did not take place till the beginning of June, 1781, when he went back to that city, Cornwallis not having occasion for his services.<sup>3</sup> Thus, very luckily for himself, he escaped being captured with Cornwallis, at Yorktown, a few months later.

Dunlap, in his History of New York,<sup>4</sup> says, "It appears strange Sir Henry Clinton should entrust a traitor with the lives and liberty of armies as he did. But I have been assured by a gentleman of the most unblemished character, now far advanced in years, that when Arnold departed from New York in the command of the army with which he committed depredations on the Chesapeake, a "dormant commission" was given to Colonels Dundas and Simcoe, jointly, by Sir Henry Clinton, authorizing them, if they suspected Arnold of sinister intent, to supersede him and put him in arrest. \* \* \* The gentleman who communicated this fact to me, was in his youth a confidential clerk in Sir Henry Clinton's office, and copied and delivered the dormant commission as directed.<sup>5</sup> This explains a passage in a letter to his government, in which he says, "this detachment is under the command of General Arnold, with whom I have thought it right to send Colonels Dundas and Simcoe, as being officers of experience and much in my confidence."

<sup>1</sup> See his detailed account of their movements, and of Phillips's illness, in his letter of May 12th, to Sir Henry Clinton. Political Magazine of 1781, vol. II., p. 390. Gordon, vol. IV., p. 110.

<sup>2</sup> Cornwallis's correspondence, vol. I., p. 100.

<sup>3</sup> Gordon, vol. IV., p. 115.

<sup>4</sup> Vol. 2, p. 201.

<sup>5</sup> See Note XIX. *ante* for the names of Clinton's secretaries.

## NOTE XXII.

THE SOUTHERN CAMPAIGN OF 1781—THE CLINTON-CORNWALLIS CONTROVERSY—CLINTON'S MS. NOTES ON THE EVENTS OF THE CAMPAIGN—GEORGE III. PERSONALLY RESPONSIBLE FOR CLINTON'S LONG COMMAND IN AMERICA.

*Vol. II., pp. 190-200.*

THE reader who desires to learn the facts upon which the author bases his severe arraignment of Clinton's conduct of the war in 1781, is referred to the third and fourth chapters of the first volume of the "Correspondence of Charles, First Marquis Cornwallis," edited, with notes, by Charles Ross, Esq., 3 vols., London, 1859. The entire correspondence of Clinton and Cornwallis, and their official dispatches to each other and to the Home Government, are there given, together with the private letters of the latter to friends, and theirs to him.

The author, of course, was ignorant of all these documents, except those which were published at the time.<sup>1</sup> It is remarkable how nearly his views coincide with those expressed in the private letters, given by Ross, the existence of which he did not know, and which have only seen the light in our day.

Some of Clinton's MS. marginal notes in his copy of Stedman's history of the war, are here given, being of interest and importance in this connection. That work was published in 1794; these notes were of course written after that date, and ten or twelve years after the pamphlet controversy between him and Cornwallis, above referred to.

Speaking of the rise in the Catawba which checked Cornwallis's rapid pursuit of Morgan, after the latter's victory over Tarleton, at Cowpens, Clinton says :

"'Tis pity he did not learn a lesson from this, that he did not recollect his actual situation, without any of the means necessary for

<sup>1</sup> Clinton's "Narrative," Cornwallis's "Answer," and Clinton's "Observations," and the documents appended to these pamphlets.

a move into North Carolina, and the risk S. Carolina and Charles-town ran in his absence, and stopt there ; but as the good G.<sup>1</sup> of America had before drawn Burgoyne over the Hudson, so it drew L. Cornwallis over the Catawba, and each finally to his own destruction, with this difference, however, between them ; Burgoyne thought he was acting in strict obedience to the King's commands, Lord Cornwallis knew he was acting in positive disobedience to the Commander-in-chief.—C."

The following remarks upon Cornwallis's movement from Wilmington to Virginia,<sup>2</sup> show clearly that jealousy on account of the dormant commission which Cornwallis had to succeed him, was Clinton's governing motive in the campaign of 1781, and was thus really the cause of the capture of the British army at Yorktown, which practically ended the war, and secured the independence of America.

" Military reasons for going to the Northward he could not have ; perhaps he thought, that, as Sir H. Clinton had declared he would resign if the good old Admiral<sup>3</sup> was not removed, his Lordship, on finding that he still remained in the command of the fleet, supposed by going into Virginia he might, by being near the Commander-in-chief, dupe him to resign to him. I wish I could find a better reason for L. C.'s march into North Carolina, from Cross Creek to Wilmington, from this last to Virginia. Tarleton tells you,<sup>4</sup> Lord Cornwallis informed him that he stills looks North, he felt perhaps that preferment came from the North.—C."

Commenting on the two fleets, at York, Clinton says that Old Point Comfort, not Yorktown, was the place he wanted fortified. His words are :

" Had Lord Cornwallis obeyed the only order he ever received from Sir H. Clinton to fortify a place of arms to cover a naval station for ships of the Line, he would have occupied the Peninsula of old point Comfort, and had he done so, the fleet he lost in York river would have been saved, and the army under his command succoured ; for the french fleet 'tis well known would not have ventured to have

<sup>1</sup> *Quere*—Genius, or Germaine ? Lord Germaine was the Minister with whom both Burgoyne and Cornwallis corresponded, independently of Sir William Howe and Sir Henry Clinton, to the great annoyance of each.

<sup>2</sup> Stedman, Vol. II., p. 354.

<sup>3</sup> Arbuthnot, who disliked Clinton as much as Clinton despised him.

<sup>4</sup> In his History of the War.

<sup>5</sup> Lord North, then the premier of Great Britain.

remained long in Lynnhaven Bay, and in the other roadsteads they could not forbid the entrance into James River. Lord Cornwallis chose, however, to disobey the Commander-in-Chief's order *once more*, and without waiting for his approbation to remove the naval station to York river, alleging as a reason that it was there alone he could hope to give effectual protection to line-of-battle ships. It will already have been seen what protection he did, or could, give, to any ships [by] the position the French fleet took ; and that they were found in when the British armament arrived off Chesapeake Bay, after Lord Cornwallis's surrender.—C."

As to the statement of Stedman<sup>1</sup> that he had been superseded by Sir Guy Carleton, Clinton says :

"Sir H. Clinton takes leaves to repeat what the King was pleased to say to him at the first audience he was *called* to after his return from America, 'I always wished to see you, Sir Henry, in the command of my armies in America, but the Duke of Newcastle was so exceedingly pressing for your return that I was obliged at last to acquiesce.' Sir H. Clinton had asked 3 times every year to have leave to resign the command, but his Majesty would never before consent."

If this is true, it is clear that George III. himself was personally responsible for all the evils his cause suffered from Sir Henry Clinton's long command of the British army in America.

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#### NOTE XXIII.

CONTEMPORARY NEW YORK OPINION OF CLINTON'S RESPONSIBILITY FOR THE SURRENDER OF CORNWALLIS, AND OF HIS REFUSAL TO PERMIT ARNOLD TO ATTACK WASHINGTON — THACHER'S STATEMENT — COLONEL HENRY LEE'S OPINION OF CLINTON AND THE OTHER BRITISH COMMANDERS.

*Vol. II., p. 203.*

A LETTER from a gentleman in New York to a relation in London, dated November 1, 1781, expresses strongly the contemporary opinion there of Clinton's conduct in 1781 :

<sup>1</sup> Vol. II., p. 400.

"With much concern I am to acquaint you of the taking of Lord Cornwallis, with his brave army, by the French and rebels on the 19th of last month. Never I believe was an army so lost, not through any fault of the noble Earl, but entirely owing to our commander-in-chief, for which I am convinced he must render an account when he arrives in England. Every person of sense in this city is highly dissatisfied with Sir H. C., believing he might have prevented this fatal surrender.

"I will mention two instances in which I presume to think he might have saved that noble officer and his army:—Washington with an army of French and Rebels in the summer lay within a few miles of Kingsbridge. We had at least *twelve thousand men* in the city and at Kingsbridge, which was near *one half more than Washington's army*, but our commander in-chief would not venture to attack them.—Washington finding this, moved, on his way to Virginia, through the Jerseys, and lay at Elizabethtown about three days. Many persons in town expected our army would have gone into Jersey to have stopped him from going against Lord Cornwallis, which at the time was known to be Washington's intention; but to our great sorrow it was not done. Washington's career would have been effectually prevented.

"I am informed a certain General, now in this city, offered to go into Jersey, to stop Mr. Washington, but it was not attended to.

"The second instance in which I think Lord Cornwallis and his army might have been saved is, his lordship was obliged to surrender *for want of ammunition*, which I cannot help thinking was well known here; notwithstanding which, I am informed that a ship is now in the harbour loaded with all kinds of military stores for Lord Cornwallis; and that this ship has been lying here loaded *ever since MAY last*. Whose fault it is she never sailed time must discover. . . . Every loyalist in this city feels very sensibly this heavy loss. How Government will act in consequence of it, is impossible for any person on this side the Atlantic to form an idea. We in this city wait with much anxiety their determination.—I hope they won't give up this country. Indeed I think they cannot, there being too much depending.<sup>1</sup>

The following intelligence from New York was received in London some weeks before the news of the capture of Cornwallis :

"Private letters from New York give a very disagreeable account of the situation of affairs there. Ever since it was known that Washington was to attempt an attack at New York, serious plans and proposals for counteracting his schemes were laid before the Commander-in-Chief. There was also many well attested accounts of

<sup>1</sup> Political Magazine, Vol. III., p. 50.

the state of Washington's army, and his state of provisions, &c., laid before him, by which it appeared that he was in no condition for attempting anything very formidable ; and, at last, the idea of Washington's attacking New York was talked of publicly as a matter of laughter only, and every day some ridiculous stories about it circulated. At the same time when this was the general state of the matter with the public at large, in the council<sup>1</sup> of the commander everything was as serious and formal as if no information as to the state of Washington's army had ever been received. This caused many serious moderate men to be very cautious in what they said, and furnished wits with many opportunities of exercising their talents on the state of public affairs.

"When Washington began to move, several very well approved of proposals for attacking him were laid before the commander and his council ; one of a very serious nature, said to be signed by General Arnold, and approved of by several of the officers high in the army list. Arnold, who had always had the best information relating to Washington and his army, proposed an attack being made on Washington in his march, and, with 5000 men to attack his army of 8000, half of them raw and undisciplined ; but it was not approved of by the Commander. There were several other proposals for attacking Washington made, but none of them were approved of by the Commander, though some of them were talked of in very high terms, and approved of by military men.

"The consequence of all this was, that the Commander every day lost credit among the inhabitants and the army ; and when the expedition to assist Lord Cornwallis in the South was talked of, it was a very common wager, two to one that nothing is done, if a certain Commander goes there in person.<sup>2</sup>

Surgeon Thacher, who was with Washington's army in Westchester, and personally present in the movement to Kingsbridge at this time, says in his Military Journal, under date of 31st of August, 1781 :

"Our situation reminds me of some theatrical exhibition, where the interest and expectations of the spectators are continually increasing, and where curiosity is raised to its highest point. Our destination has been for some time matter of perplexing doubt and uncertainty ; bets have run high on one side that we were to occupy ground on the Jersey side and aid in the siege of New York, and on the other, that we are stealing a march on the enemy, and are actually going to

<sup>1</sup> This council were Governors Franklin of New Jersey and Martin of North Carolina, William Smith, Andrew Elliot, George Duncan Ludlow, and General Robertson.

<sup>2</sup> Political Magazine, Vol. III., p. 159.

Virginia in pursuit of the army under Lord Cornwallis. We crossed at Kings Ferry on the 21<sup>st</sup> and encamped at Haverstraw. . . . . The great secret respecting our late preparations and movements can now be explained. It was a judiciously concerted stratagem calculated to menace and alarm Sir Henry Clinton for the safety of the garrison of New York. . . . . The deception proved completely successful. A part of Cornwallis's army are reported to have returned to New York. His Excellency General Washington having succeeded in a masterly piece of *generalship*, has now the satisfaction of leaving his adversary to ruinate on his own mortifying situation, and to anticipate the perilous fate which awaits his friend Lord Cornwallis in a different quarter."<sup>1</sup>

In this connection, Colonel Henry Lee's ("Light Horse Harry") opinion of Clinton and the British commanders are of interest :

" Why Sir Henry Clinton should have ever encouraged his general in Virginia to expect relief seems unaccountable. The project adopted, too late, by Cornwallis of escaping north or south, was much more feasible than the plan of relief relied on by the British General-in-chief.<sup>2</sup> . . . . The further the inquiry is pursued the more conspicuous will the want of due foresight and wise action in the British Commander-in-chief appear. . . . . Relying upon the superiority of the British Navy he seems never to have reflected that the force of uncontrollable accidents might give that superiority to his enemy."<sup>3</sup> " Sir Henry Clinton was—like most of the generals who appeared in this war—good, but not great. He was an active, zealous, honorable, well bred soldier ; but Heaven had not touched his mind with the ethereal spark. He could not soar above the ordinary level ; and though calculated to shine in a secondary sphere, was sure to twinkle in the highest station. When presidents, kings, or emperors confide armies to soldiers of common minds, they ought not to be surprised at the disasters which follow. The war found General Gage in chief command in America, confessedly better fitted for peace. He was changed for Sir William Howe, who after two campaigns, was withdrawn, or withdrew. Sir Henry Clinton succeeded, and when peace became assured, Sir Guy Carleton, afterwards Lord Dorchester, took his place. By a strange fatality the soldier best qualified for the arduous duties of war was reserved to conduct the scenes of returning peace. . . . . The effect of such policy (that of firmness justice and kindness) was powerful. General Greene, from whom the information is derived, expressed his conviction that the kindness of Carleton was more to be dreaded than the bayonets of

<sup>1</sup> Edition of 1823, pp. 323, 324.

<sup>2</sup> Memoirs of the War in the Southern Department, Vol. II., p. 365.

<sup>3</sup> Ibid., p. 366.

Howe; and mentioned as an undeniable fact, that in the various districts to which our captured troops (*from Canada in 1776*) returned, not excepting the faithful State of Connecticut, the impressions made by the relation of the treatment experienced from him produced a lasting and unpropitious effect. . . . America may justly rejoice in the misapplication of such talents, and Great Britain as truly lament the infatuation of her rulers, who overlooked a leader of such high promise." <sup>1</sup>

A stronger corroboration of the views expressed by the author of this history, who died nearly twenty years before Lee's work was published, could not be written.

#### NOTE XXIV.

**JOSHUA HETT SMITH'S TREASON IN 1781—HE COMMUNICATES SIR HENRY CLINTON'S MILITARY DETAILS OF THE ARMY AND NAVY AT NEW YORK TO GOVERNOR GEORGE CLINTON—SIR HENRY CLINTON'S ARMY RETURNS REGULARLY SENT TO WASHINGTON DURING TWO YEARS—ACTION OF GOVERNOR CLINTON ON THE TREASONABLE VERMONT TREATY WITH SIR HENRY CLINTON, SENT HIM BY WILLIAM SMITH.**

*Vol. II., pp. 209, 210.*

THE "Adjutant-General" to whom was brought the intercepted letter of Joshua Hett Smith to Governor George Clinton, with the full details of Sir Henry Clinton's army and fleet, and who mentioned the fact in the author's hearing, as stated in the text, was Major Oliver de Lancey, of the Seventeenth Light Dragoons, second son of Brigadier-General Oliver de Lancey, who was appointed to that office on the death of Major André.

The "Stephen Moylan," who mentioned the fact of the regular receipt by Washington of copies of the British army

<sup>1</sup> *Ibid.*, 367, 368, 369.

returns made to Sir Henry Clinton, was Colonel Stephen Moylan, of Pennsylvania, an officer of honor and probity, who was also quartermaster-general in Washington's army—a staff appointment. He served most of the war, however, as colonel of cavalry; was brevetted Brigadier-general, November 3, 1783, and died in Philadelphia, April 11, 1811. He was a well-bred Irish gentleman of good education, and a brother of the Roman Catholic Bishop of Cork.

The New York Legislature adjourned on 23d November, 1781, to meet at Poughkeepsie on the third Wednesday of May, 1782.<sup>1</sup> Smith's communication of the treasonable Vermont Treaty of December, 1781, with Sir Henry Clinton, to return to their allegiance to the British Crown, with other papers, and his opinion in relation thereto, to Governor George Clinton, of New York, caused the Governor, on the 20th of January, 1782, to call a *special session* of the Legislature, for the 11th of the ensuing February, at Poughkeepsie. A quorum of the Assembly did not appear till February 21st, and not till the 23d was there present a quorum of the Senate. On that very day, however, Governor Clinton laid these Vermont Treaty papers, received from Smith, before the Legislature with a message, dated the 21st, in which he says:

“ I cannot forbear recommending to your particular attention, the Affidavits and other papers, which prove a treasonable and dangerous Intercourse and connection between the Leaders of the Revolt in the Northeastern Part of the State, and the common Enemy. In order that you may form a competent judgment of this matter such of the original Papers respecting it which are in my possession, will be delivered to you.—Your own prudence will, however, suggest that these communications as far as they relate to the Names of Persons from whom the intelligence is derived, ought not to be divulged. I have only to observe, that those Proofs are corroborated by a Variety of circumstances, which equally tend to shew that these criminal Transactions are not confined to

<sup>1</sup> Journals, Fifth and Sixth Sessions, p. 47.

Individuals, but have been conducted under the countenance and sanction of that usurped Government.

GEO. CLINTON.

"POUGHKEEPSIE, February 21<sup>st</sup>, 1782."

These papers were referred to a joint committee of the two Houses, and on their report, made the 2d of March, 1782, it was,

*"Resolved*, That it does appear from clear and convincing evidence, and which it is believed Congress are also possessed of, that the Leaders of the Revolt in the Northeastern part of the State, and who exercise a usurped and pretended Government under the Stile of the State of Vermont, have for some time past, held, and still do hold a treasonable and dangerous correspondence with the Enemy; and among other things have negotiated a Treaty, and which only requires ratification on the part of Great Britain to give it its intended effect; and in which Treaty it is among other things stipulated, that there shall be raised in the District of Country aforesaid a Number of troops for the Service of the King of Great Britain.—That the disaffected are daily emigrating to the said District of Country; and that many persons notoriously disaffected to the American Cause, have been appointed or elected to and exercise important offices under the said pretended Government."

A second resolution expresses the determination of New York to enforce its authority and protect its subjects, and the third and last directs the substance of these resolutions to be presented to Congress.<sup>1</sup>

It appears from the above resolution that this treaty and the papers had also been brought to the knowledge of Congress in Philadelphia. The author evidently was in ignorance of this fact, as he does not mention it. The dates show that this treason of the Vermonters was a little more than *four years* after their victory over Baum's detachment at the Wollomschaack, called the Battle of Bennington, so little, really, had the cause of America to do with their action in the war of the Revolution. Copies of a few papers, from the great Haldiman<sup>2</sup> collection in London relating to this matter,

<sup>1</sup> Journals, Senate and Assembly of New York, Fifth and Sixth Sessions, pp 50 and 54.

<sup>2</sup> General Haldiman was the British Commander in Canada through whom the Vermonters communicated with Lord George Germaine and Sir Henry Clinton.

obtained from a private source, appear with comments, in Volume II. of the Collections of the Vermont Historical Society. All the documents on this subject should be given to the world *in full*.

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## NOTE XXV.

## THE CASE OF COLONEL ISAAC HAYNE.

*Vol. II., p. 214.*

THE author is mistaken in saying that Hayne was "tried by a court martial." The court before which he was brought, composed of four general officers and five captains, was one of *inquiry* only, which merely found the facts of the case. His execution, as the letter informing him of the fact stated, was "not ordered in consequence of any sentence of a court of inquiry, but by virtue of the authority with which the commander-in-chief in South Carolina and the commanding officer of Charleston are invested." Hayne's object in taking the oath and accepting British protection was to take care of his plantation and his wife and children, the first of whom was sick with smallpox, and who subsequently died. He claimed that he was threatened with confinement if he did not take arms on the British side, and that this released him from his oath and obligations, according to Gordon.<sup>1</sup> Nothing of this, however, appears in the official papers published at the time on the subject. It was a most melancholy case in any point of view.

<sup>1</sup> Vol. IV., p. 101.

## NOTE XXVI.

## JOHN JAY'S MARRIAGE.

*Vol. II., p. 223, Note 1.*

THE facts mentioned by the author in his note are not of the least importance in themselves, but some of the circumstances relating to them are a little curious genealogically.

The reference is to two of the daughters of Peter de Lancey, of Roschill, Westfarms, Westchester County, the head of the second branch of the de Lancey family, and through their mother grand-daughters of Governor Colden.

An intimacy had long existed between the de Lanceys and the Jays, beginning with their first French ancestors, Etienne de Lancey and Augustus Jay, both of whose names appear together on the first page of its records as officers of the French Church in New York, and a consanguinity existed subsequently between their descendants. The facts stated were well known at the time in the families, and in New York society, but Mr. Jay mistook the cause of the decisions of the young ladies, which was that they preferred other suitors whom they married.

Though Mr. Jay did marry Miss Sarah Livingston in April, 1774, the friendly relations of the families continued unbroken. Four years afterward, when one of the brothers of these two ladies, Colonel James de Lancey, the famous commander of the Westchester Light Horse, happened to be taken prisoner and confined at Hartford, Mr. Jay, then at Poughkeepsie, wrote him in these words : " Notwithstanding the opposition of our sentiments and conduct relative to the present contest, the friendship which existed between us is not forgotten ; nor will the good offices formerly done by yourself and family cease to excite my gratitude. How far your situation may be comfortable and easy I know not ; it is my wish, and shall be my endeavour, that it may be as much so as may be consistent with the interest of that great cause to which I have devoted everything I hold dear in this world. I have taken the lib-

erty of requesting Mr. Samuel Broome immediately to advance you one hundred dollars on my account.

"Your not having heard from me sooner was unavoidable. A line by the first opportunity will oblige me. Be explicit, and avail yourself without hesitation of the friendship which was entertained, as well as professed, for you, by

"Your obedient and humble servant,

"JOHN JAY.<sup>1</sup>

"POUGHKEEPSIE, 2<sup>d</sup> Jan., 1778."

Colonel de Lancey, however, had no occasion to accept this most friendly and considerate offer of Mr. Jay, being permitted to communicate with his own family. When Mr. Jay and Miss Livingston were about to be married, Mr. Jay wrote to his brother-in-law, the Rev. Dr. Henry Munro, rector of St. Peter's, Albany, who had married his sister, Eve Jay, to perform the ceremony, and his letter, among other papers, has descended to the writer of this note, who is maternally a great-grandson of Dr. and Mrs. Munro, and at present the head of the eldest branch of the de Lancey family, and is now in his possession. The Misses de Lancey, and Colonel James de Lancey, and Mr. Jay were blood relatives, the former being, on their father's side, great-grandchildren of Stephanus van Cortland, of the Manor of Cortlandt, and the latter, a grandson, maternally, of his brother, Jacobus van Cortlandt, of Lower Yonkers. They were, therefore, second cousins once removed.

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#### N O T E X X V I I .

SIR JAMES JAY, AND THE GOVERNORS OF KING'S COLLEGE.

*Vol. II., p. 224.*

IN the introduction to his "Letter," mentioned below, Sir James gives the following account of his engaging in the col-

<sup>1</sup> Jay's Life of Jay, Vol. I., p. 84.

lege aid matter. "While I was in New York, and intending to come to England on some business of my own, the Rev. Dr. Johnson, at that time President of the College of New York, proposed it to me to make a collection in this Kingdom for the benefit of that Seminary, which I consented to do. The Doctor called a meeting of the Governors of the College and laid the matter before them, and they appointed a Committee to confer with me on the subject. It was agreed between that Committee and myself that I should undertake the collection; and various measures were concerted between us for carrying it into effect."

The Governors of the College executed, on the 14th of August, 1762, under their corporate seal, a power of attorney, by which they appointed "James Jay, M.D., a gentleman of this city, of a liberal education, and of eminence in his profession, the Hon. George Clark, Esq., Secretary, and Robert Charles, Esq., Agent, of this Province, and Barlow Trecothick, and Moses Franks, merchants of London, and each of them, our substitutes, for us and in our behalf, to solicit and receive the donations and contributions of all such as shall be generously disposed to favor the advancement of learning and virtue in this extensive and uncultivated part of the world."<sup>1</sup> A Committee of the Governors, consisting of John Tabor Kempe, Henry Barclay, Rev. Dr. Samuel Auchmuty, Rev. Dr. Samuel Johnson, and James Duane, drew up a few very brief instructions for his guidance. As to the gentlemen in England, named in the power with him, Sir James wrote to the Governors, saying, "Stranger as I was to them, I did not think it prudent to trust them with the principal measures I was pursuing."<sup>2</sup>

After Sir James had been about two years in England, Mr. Trecothick, whose suspicions were aroused by Sir James's refusal to act with him and the other gentlemen named, privately wrote the Governors to draw on him, not being satisfied, either with his conduct, or his responsibility. They did so, and likewise ordered Mr. Trecothick to effect a final

<sup>1</sup> Sir James Jay's letter to the Governors of King's College, p. 4.

<sup>2</sup> Ibid. p. 4.

settlement with him. Sir James did not honor the bills so drawn, and refused to settle. A Chancery suit against him was the result. Sir James then began proceedings against Trecothick, and the whole matter was in controversy and litigation, until finally settled in 1773, by the mediation of friends, as stated by the author, who was one of the Committee.

The following are extracts from the proceedings of the Governors, showing the settlement effected, being such portions of their proceedings as Sir James chose to print from the copy of the full proceedings in this matter sent him by order of the Governors in July, 1773.

#### MINUTES OF THE PROCEEDINGS OF THE GOVERNORS.

AT a Meeting of the Governors of King's College, in the City of New York, on Thursday, the first Day of July, 1773.

Present—His Grace, the Archbishop of Canterbury (by his Proxy), Dr. Cooper. The Speaker of the General Assembly.<sup>1</sup> The Mayor of the City of New York.<sup>2</sup> The Rector of Trinity Church in the City of New York.<sup>3</sup> The Senior Minister of the reformed Protestant Dutch Church in said City.<sup>4</sup> The Minister of the antient Lutheran Church in the said City.<sup>5</sup> The President of King's College in the said City.<sup>6</sup>

|                                |                                    |
|--------------------------------|------------------------------------|
| Col. De Lancey, <sup>7</sup>   | The Rev. Dr. Ogilvie, <sup>8</sup> |
| Mr. Livingston, <sup>9</sup>   | The Rev. Mr. Inglis, <sup>10</sup> |
| Mr. Lispenard, <sup>11</sup>   | Mr. White, <sup>12</sup>           |
| Capt. De Lancey, <sup>13</sup> | Mr. Jacob Walton. <sup>14</sup>    |

The Rev. Mr. Inglis, Chairman of the Committee appointed on the 18<sup>th</sup> day of February last, to confer with Sir James Jay on the

<sup>1</sup> John Cruger.

<sup>2</sup> Whitehead Hicks.

<sup>3</sup> Rev. Dr. Auchmuty.

<sup>4</sup> Rev. Johannes Ritzema.

<sup>5</sup> Rev. Bernard M. Houscall.

<sup>6</sup> Dr. Myles Cooper.

<sup>7</sup> Oliver De Lancey, Sr., of the Council, subsequently Brigadier General.

<sup>8</sup> John Livingston.

<sup>9</sup> Leonard Lispenard, Treasurer of the College.

<sup>10</sup> James De Lancey, nephew of Oliver above named, head of that family and party, eldest son of Lt. Gov. De Lancey.

<sup>11</sup> Rev. John Ogilvie, of Trinity Church.

<sup>12</sup> Rev. Charles Inglis, of Trinity Church, after the war Bishop of Nova Scotia.

<sup>13</sup> Henry White of the Council.

<sup>14</sup> Of New York, brother of William Walton, and brother in-law of Speaker Cruger.

matters in dispute between him and this Corporation, delivered in a Report in writing, bearing date the 5<sup>th</sup> day of March last, which being read, the same was Ordered to be Confirmed and Entered in the Minutes, and is in the words following (to wit) :

*To the Governors of the College of New York.*

“GENTLEMEN:—Pursuant to the annexed Order, the Committee do report, that after conversing with Sir James Jay, and hearing read various letters and papers, relative to his conduct and proceedings abroad, whilst he was engaged in the business of the college, and having received full and candid answers to all such questions as were asked him. They are of opinion from the above information, as well as from the declaration of some of the *then* members of the Corporation, that when the Governors drew for 4,000*l.*, it did not proceed from any distrust of his integrity; but was in consequence of advice received from England; And that notwithstanding the differences which unhappily arose between Him and the Board of Governors, he shewed himself a warm friend to the Interests of the College, and discharged the trust reposed in him with Fidelity and Honor.”

“That Sir James Jay having delivered a Paper to the Committee, conceived in the words following, *to wit*:

“‘ GENTLEMEN:—The sole view I had in the controversy between the governors and myself, was to clear my reputation from the aspersions cast on it in consequence of certain measures of the governors that indirectly impeached my integrity. As the gentlemen who were concerned in those measures, have declared to me that they were not influenced in any of them by a distrust of my integrity imbibed from any part of my conduct, but merely from the hints of Mr. Trecotthick. And as there appears a disposition in the Board of Governors to do full justice to my reputation, I chearfully submit the matter of property to their own determination. It never was an object with me; and I beg leave to assure you, gentlemen, that I am as much uninfluenced by pecuniary considerations in the settlement of this controversy, as I was formerly unbiassed by selfish views, when I voluntarily sacrificed my own interest to promote that of the college.

‘ JAMES JAY.

“‘ Feby 24, 1773.’

“The Committee are therefore of opinion, that he hath made a very disinterested and generous proposal; and that he should be allowed for his loss of time and expences, jointly considered, the sum of 790 Guineas; and that upon paying to the college treasurer the ballance of the monies remaining in his hands, mutual releases should be passed between Sir James and this corporation.”

"All which is nevertheless submitted this fifth day of March, in the year of our Lord, 1773."

Signed,  
 Samuel Ver Planck,<sup>1</sup> Thomas Jones,<sup>2</sup>  
 Myles Cooper, Go. Banyar,<sup>3</sup>  
 Whitehead Hicks, Wm. Walton.<sup>4</sup>  
 Charles Inglis,

Ordered, That Sir James Jay be furnished with a copy of the said Report and Order, under the seal of this Corporation.

LAMBERT MOORE, *Secretary.*

RELEASE TO MR. TRECOTHICK.

At the *request* of the governors of the college of the province of New York, in the city of New York, in America, I do hereby release, discharge, and forever quit claim unto Barlow Trecothick, Esq., of the city of London, all actions, and causes of actions, which I have or may have against him, by reason of any thing which he writ to them or either of them respecting me.

Signed,

JAMES JAY.

NEW YORK, July 1, 1773.

Sealed and delivered in the  
 presence of                   Lambert Moore,  
                                   Robert Hull.

Sir James returned to England, and there published, under date of January 1, 1774, a not very happy pamphlet styled "A Letter to the Universities of Oxford and Cambridge in respect to the Collections that were made for the Colleges of New York and Philadelphia, by Sir James Jay, Knight, M.D.," from which the foregoing document is taken.

Three years before, in 1771, he also published, in London, "A Letter to the Governors of the College of *New York* respecting the collection that was made in this Kingdom in 1762 and 1763," in the appendix to which he gives the power of attorney, and the brief instructions above alluded to. It is a production of more strength of language than wisdom.

<sup>1</sup> Of Fishkill.

<sup>2</sup> Justice of the Supreme Court,—the Author.

<sup>3</sup> Goldsbrow Banyar, the Deputy Secretary of the Province.

<sup>4</sup> The great merchant, famed for his hospitality, who built the Walton house.

In 1813 Sir James presented a petition accompanied by a very extraordinary "Narrative" to Congress for reimbursement for alleged services and losses in the Revolution. It received no attention, although he subsequently printed it. When George III. knighted him, on presenting the congratulatory Address of the Governors of King's College on the peace of 1763, it was a surprise to him, and a very great one also to the Governors of the College, and to everybody in New York. It was said the King did it suddenly of his own accord on the spur of the moment. Sir James Jay was born in 1732, and died unmarried in 1815, at Springfield, New Jersey, where he had resided for some years. He was the third son of his parents, his brother, John Jay, the sixth.<sup>1</sup> The two did not agree after the Revolution, and had little or no communication with each other. The connection of Sir James with the passage of the New York Act of Attainder, is referred to hereafter in note XXXIX.

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#### N O T E X X V I I I .

##### SIR GUY CARLETON'S "HOSTILITIES" AGAINST BRITISH ARMY CORRUPTION IN NEW YORK.

*Vol. II., p. 227.*

THE corruption of the British officials in New York during the war, so thoroughly exposed and denounced by the author, shows the absolute necessity of Carleton's action. Compare with his remarks the following article from the "Political Magazine," for January, 1782:

"Our present defensive war in America costs the nation a third more money than the 40,000 men under Sir William Howe. Gentlemen in office in America have grown more expert in their business, and new sources of wealth have

<sup>1</sup> Jay family record, *New York Genealogical and Biographical Record*, Vol. VII., p. 115.

been opened. We have already had several cargoes of men fully gorged and satiated with national money; and the hungry harpies, who have replaced them, are cramming their pockets with wealth, in order likewise to bring home their share. However, the money is of little consideration, when we reflect on the brave men we have lost."<sup>1</sup>

One very curious and very striking effect of Sir Guy's "hostilities" to the official corruption in New York, was the publication on 1st of June, 1782, by Treasurer John Smyth, of the Receipts and disbursement of the "City Funds," from the 1st of November, 1777, to the 30th of April, 1782, as stated in Note XIX., *ante*, being four and a half years. Not a word nor a figure was ever given to the public before. The other four accounts there given, were subsequently published from time to time, covering the whole period of Sir Guy's command, and ending Nov. 24, 1783, the day before the Evacuation of New York; and the last, oddly enough, was not published until the 29th of November, four days afterward, but six days before Sir Guy's army finally left Staten Island, which it did not do till December 4, 1783.

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#### N O T E   X X I X.

THE " BOARD OF DIRECTORS OF THE ASSOCIATED LOYALISTS"—THE "SOCIETIES," OR ARMED BANDS THAT THEY FORMED—WHAT THE ORGANIZATION WAS, AND ITS OBJECTS.

*Vol. II., p. 227.*

THE author has already given in the beginning of Chapter XIV., of the first volume, a striking account of the misdeeds of the three " Societies," or companies of Associated Loyalists, organized under this " Board of Directors of Associated Loyalists," and how these companies were hand-in-glove with similar bodies of predators on the American side.

<sup>1</sup> Political Magazine, Vol. III., p. 48.

The following details of the organization are of interest. The plan was suggested by persons in New York, through Clinton, to Lord George Germaine, the Minister, who obtained the King's approval of it, and directed Sir Henry Clinton to let it be carried out. It was talked of in 1779, but not put in operation till 1780, when on the 27th of December in that year, Clinton signed a certificate of approval of the plan, which, with a "Declaration of the Board of Directors of Associated Loyalists," dated December 28, 1780, setting forth its details and advantages, signed, William Franklin, President, was published for the first time, in Rivington's *Gazette*, of December 30, 1780. The Declaration says, this Board of Directors was "established for embodying and employing such of his Majesty's faithful subjects in North America, as may be willing to associate under their direction, for the purpose of annoying the sea-coasts of the revolted Provinces and distressing their trade, either in co-operation with his Majesty's land and sea forces, or by making diversions in their favor, when they are carrying on operations in other parts." The "Societies" of "Associators" were to be commanded by officers recommended by the Board and commissioned by Clinton, to be furnished with arms, ammunition, and rations; to have all captures for themselves when acting alone; to be furnished with vessels for the transport service when desired, to be manned by themselves; were not to be liable to impressment; the prisoners taken by them to be exchanged only for Associated Loyalists named by the Board; the sick and wounded to be received in the King's hospitals; those serving the regular army as guides to be paid wages; and each who should act under the Directors' orders during the war, "will receive a gratuitous grant of Two Hundred Acres of Land in North America."

The document names the following persons as having been constituted Directors by a commission from Sir Henry Clinton: William Franklin, Governor of New Jersey, Josiah Martin, Governor of North Carolina, Timothy Ruggles, Daniel Cox, George Duncan Ludlow, Edward Lut-

wyche, George Roome, George Leonard, Anthony Stewart, and Robert Alexander,—ten in all. The paper is silent altogether on their salaries, which the author states was £200 sterling each, with rations of every kind.<sup>1</sup> He also says the Board "consisted of 25 members." The others must have been subsequently added to the ten originally named in the Declaration, as the body existed till broken up by Sir Guy Carleton, late in 1782. One of the objects of the organization mentioned in the declaration, was, that the Associators could retaliate upon the Americans the outrages and murders they committed upon the Loyalists. This it was which led to the execution of Joshua Huddy, by the verbal order of William Franklin, in retaliation, for his assisting in taking Stephen Edwards, of Monmouth, a loyalist, out of his bed and hanging him, and for the murder by the Americans of eight or nine other loyalists of Monmouth County, New Jersey, specifically named in the Report of the Board of Directors to Sir Henry Clinton on the death of Huddy.<sup>2</sup>

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#### N O T E X X X.

CAPTAIN ASGILL AND HIS CRUEL TREATMENT BY WASHINGTON'S ORDERS WHILE HELD IN RETALIATION FOR HUDDY'S DEATH—WASHINGTON DENIES THE FACT, AND HAS HIS PAPERS ON THE SUBJECT PUBLISHED—LADY ASGILL'S APPEAL TO THE FRENCH COURT SUGGESTED BY SIR JAMES JAY.

*Vol. II., pp. 230-234.*

THE cruel treatment of Captain Asgill, for which the author so indignantly condemns Washington, was a subject of conversation in England after Asgill's return home and was gene-

<sup>1</sup> Vol. I., p. 303.

<sup>2</sup> Political Magazine, Vol. III., p. 472, where is given a very full report of the Huddy affair. See also Sparks' Writings of Washington, Vols. VIII., pp. 262, 263.

rally credited there. (Mr. James Tilghman, in May, 1786, wrote to Washington, enclosing an extract from a letter from a gentleman in London to his son Tench Tilghman, who had then lately died, giving a similar account of the treatment to that stated by the author, as Washington's reply shows. Washington, on the 5th of the following June, replied in a long letter, denying the charge, and giving his view of his own action in the matter. In this letter, he says, "That I would not have given countenance to the insults, which *he* says were offered to his person, especially the grovelling one of erecting a gibbet before his prison window, will, I expect, readily be believed, when I explicitly declare that I never heard of a single attempt to offer an insult, and that I had every reason to be convinced that he was treated by the officers around him, with all the tenderness, and every civility in their power.")

When Asgill first arrived in Jersey, he was allowed much liberty, and permitted to ride abroad with an attendant. When Washington was made aware of this fact, he wrote to Colonel Dayton, on the eleventh of June, 1782, "I am informed Captain Asgill is at Chatham, without guard, and under no constraint. This, if true, is certainly wrong. I wish to have the young gentleman treated with all the tenderness possible, consistent with his present situation, but until his fate is determined, he must be considered as a close prisoner, and be kept in the greatest security. I request, therefore, that he be sent immediately to the Jersey line, where he is to be kept a close prisoner, in perfect security, till further orders."<sup>1</sup>

It was while so confined that the outrages he mentioned in England were perpetrated. They were doubtless much exaggerated, in the repetition of them, in both countries. They were probably the result of over-zealous or over-hostile parties, and not committed by the officers charged with his custody.

As to Colonel Dayton, the commander, Asgill himself

<sup>1</sup> Sparks' Writings of Washington, Vol. VIII., p. 306.

thanked Washington in a letter of May 17, 1782, for that officer's kindness. Asgill was finally released by Congress on the 7th of November, 1782, at the request of the French King and his minister, Vergennes, which action was communicated to him by Washington on the 13th of the same month, in a letter enclosing a passport for New York. He sailed for England immediately after reaching New York, arrived there in December, and was presented to the King at a levee on the 23d of the same month.<sup>1</sup> (That Asgill thought Washington somewhat responsible for the treatment he had experienced, whatever it was, is shown by the fact that he made no reply or acknowledgment of any kind, to his letter; and that the latter felt this, is clear from the following passage in his letter to Mr. James Tilghman, above mentioned: "I was not without suspicions, after the final liberation and return of Captain Asgill to New York, that his mind had been improperly impressed, or that he was defective in politeness. The treatment he had met with, in my conception, merited an acknowledgment. None, however, was offered, *and I never sought the cause.*"<sup>2</sup>)

The allegation that Washington personally directed the cruel treatment of Asgill, unfounded as the charge was, caused the former so much feeling, that he determined that all the papers in his possession relating to it should be published. They were, after much delay and trouble, found, and copied by Tobias Lear, his Secretary, and, with a letter dated September 1, 1786, were sent by Washington to Colonel David Humphreys, who had been one of his aids. Colonel Humphreys arranged and published them himself, not referring, of course, to Washington's agency in the matter, in the *Columbian Magazine*, for January and February, 1787. In the letter to Humphreys accompanying them, Washington makes this remarkable statement: "There is one mystery in the business, which I cannot develop, nor are there any papers in my possession which explain it. Hazen was ordered to send an unconditional prisoner." Asgill

<sup>1</sup> Political Magazine, Vol. III., p. 176.

<sup>2</sup> The italics are the editor's.

comes. Hazen, or some other, must have given information of a Lieutenant Turner, under the former description. Turner is ordered on, but never came. Why? I am unable to say; nor is there any letter from Hazen to be found, which accounts for a non-compliance with the order. If I had not too many causes to distrust my memory, I should ascribe it to there having been no such officer, or that he was also under capitulation; for Captain Shaack seems to have been held as a proper victim after this."

Washington wrote this letter when very sick with the fever and ague, a fact which shows his earnestness in getting the papers before the public. "I write," says he, "with a very aching head and disordered frame, and Mr. Lear will copy the letter. Saturday last, by an imprudent act, I brought on an ague and fever on Sunday, which returned with violence Tuesday and Thursday; and if Dr. Craik's efforts are ineffectual, I shall have them again to-day."<sup>1</sup> In the remarkable

"Narrative" accompanying his "Memorial," laid by Sir James Jay before Congress, in 1813, referred to in the preceding note, he says, "The vessel in which he sailed" (*to England on being liberated by Carleton, in 1782*), "carried over the account of Captain Asgill's being selected as an object of retaliation. Your Memorialist, soon after his arrival in London, was applied to by Lady Asgill, in behalf of her unfortunate son. He had the happiness to suggest, and to assist in executing the means,<sup>2</sup> the Application to the court of France, by which the destined victim was preserved. The case indeed of the young man was the more interesting, as his father had always been a decided friend to the American Cause, a circumstance which induced your Memorialist to write to General Washington on the occasion."<sup>3</sup>

Capt. Asgill, at the time he was chosen for retaliation, was a youth of twenty, the only son of Charles Asgill, a wealthy banker and alderman of London, whom George III. created

<sup>1</sup> Sparks' Writings of Washington, Vol. IX., p. 197. Nearly all the correspondence on the subject appears in Sparks' eighth and ninth volumes.

<sup>2</sup> So in original

<sup>3</sup> The letter, dated 19th July, 1782, appears as a note to the "Narrative."

a Baronet, April 14, 1761. He became a Captain in the first foot, February 3, 1781, and was surrendered with his regiment at Yorktown.

He subsequently became an officer of distinction, served in the Irish Rebellion, was made General, June 4, 1814, and died General Sir Charles Asgill, Baronet, in July, 1823. (*"Army List," "Peerage and Baronetage."*)

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#### NOTE XXXI.

THE BRITISH NEGOTIATORS OF THE PEACE, OSWALD AND WHITEFORD—WHO THEY WERE—THE AMERICAN NEGOTIATORS—ADAMS'S DESCRIPTION OF FRANKLIN AND JAY—LORD SHELBURNE'S NICKNAME, “MALAGRIDA,” AND ITS ORIGIN—HIS STOCKJOBING.

Vol. II., p. 237.

THE “baker” and the “vintner,” as the text styles them, whom the British Government appointed to negotiate peace, in 1782, with Franklin, Jay, and Adams, three of the ablest statesmen then living, and whose superiors as such were not to be found in any nation of Europe at that day, were Richard Oswald and Caleb Whiteford. The latter was not, however, a “co-commissioner,” as the author states, in name (though really so in fact), but was Oswald’s “Secretary,” and practically the only person he had to consult with *confidentially*.<sup>1</sup>

Richard Oswald, of Philpot Lane, London, merchant, was a Scotchman who had been a contractor for biscuit and provisions in Germany during the Seven Years’ War. His business in that country not being done to his satisfaction, he

<sup>1</sup> Later in the negotiations, and after the raising of the siege of Gibraltar, Henry Strachey was sent over as a colleague to Oswald. He had been the Secretary of Lord and Sir William Howe’s Commission for restoring peace in America in 1776, and the Secretary of Lord Clive, in India, and was a man of good education and ability. The negotiation was mainly concluded before his appointment.

went there in person, and subsequently became Commissary-General to the Duke of Brunswick's army. He made a fortune, and in 1759 bought an estate in Ayrshire named Auchencruive, and thus became "Richard Oswald, of Auchencruive." He was a younger son of the Rev. George Oswald, of Dunnet, in Caithness, a Scotch Presbyterian clergyman. He married a Miss Ramsay, and with her acquired considerable estates in America and the West Indies. A liberal in trade and politics he was a friend of the famous Adam Smith, by whom he was introduced to Lord Shelburne.<sup>1</sup> On a visit to Paris he had become acquainted with Franklin, and was presented to Count Vergennes. The former, just before Lord North's administration fell, sent a letter from Paris by, and at the suggestion of, Lord Cholmondeley, to Lord Shelburne, whom he knew before the war, congratulating him on the passage of Conway's motion,<sup>2</sup> and saying, "I hope it will tend to produce a general peace." Shelburne showed the letter to Lord Rockingham, the new Premier, and his cabinet, which was just then formed, and thus, through Shelburne, Oswald was pitched upon to open an *informal* negotiation for peace with Franklin, and he was subsequently commissioned to open a formal one with the American Commissioners.<sup>3</sup>

Thus this very inferior man, who could not speak a word of French, became pitted against the three astute Americans, who were all masters of that language. He was about seventy-two years old, when the treaty was made,<sup>4</sup> and died two years afterward, in 1784.

CALEB WHITEFORD, his Secretary, whom John Adams, in his diary, calls "Whitefoord," was a wine merchant of London, a Scotchman too it is believed. He had less ability even than Oswald. His conversations, as given in Adams's diary,<sup>5</sup> show what was his mental calibre. That "British

<sup>1</sup> Sir G. C. Lewis's Administrations of Great Britain, 1783-1830, p. 81.

<sup>2</sup> See p. 221, *ante*.

<sup>3</sup> Life of Shelburne, Vol. III., p. 175.

<sup>4</sup> Jay was then 37, Adams 47, Laurens 59, and Franklin 76.

<sup>5</sup> Works, Vol. III., p. 307.

interests," in so grave a crisis, were committed to such feeble hands, is one of the greatest marvels of English diplomacy.

The American Commissioners appointed by Congress were Franklin, Adams, Jay, Laurens, and Jefferson. The latter did not go to Europe; Laurens was captured, put in the Tower of London, and was only exchanged in time to get to Paris a day or two before the preliminary articles were signed; Adams arrived in Paris from Holland, on October 26, 1782. In his diary, under date of October 27th (the next day), he says: "William [Franklin's grandson] has lately been very frequently with Jay at his house, and has been very desirous of persuading Franklin to live in the same house with Jay. *Between two as subtle spirits as any in this world, the one malicious, the other, I think, honest, I shall have a delicate, a nice, a critical part to act.*"<sup>1</sup> Franklin's cunning will be to divide us; to this end he will insinuate, he will intrigue, he will manœuvre. My curiosity will, at least, be employed in observing his invention and artifice. Jay declares roundly, that he never will set his hand to a bad peace. Congress may appoint another, but he will make a good peace or none."<sup>2</sup>

"MALAGRIDA" was a nickname applied to Lord Shelburne, to describe his insincerity and duplicity. It was first given to him in a political squib, published in the *Public Advertiser*, of London, in 1767, believed to have been written by the famous Jack Wilkes, signed, "Correggio." "But no piece," it said, "would be complete without a young man who will make a capital figure. His features are too happily marked to be mistaken. A single line of his face will be sufficient to give us the heir apparent of Loyola and all the College. A little *more of the devil, my lord, about the eyebrows*; that's enough, a perfect Malagrida, I protest."<sup>3</sup> Gabriel Malagrida was an Italian Jesuit, who was long imprisoned in the

<sup>1</sup> The italics are the editor's.

<sup>2</sup> Works of John Adams, Vol. III., p. 300.

<sup>3</sup> Sir G. C. Lewis says that this squib was written by Junius.—Administrations of Great Britain, 1783-1830, p. 30. On the other hand Lord Edward Fitzmaurice says it was ascribed to Wilkes.—Life of Shelburne, Vol. II., p. 164.

castle of St. Julien, at the mouth of the Tagus, and finally strangled, and his body burnt at the stake, in 1761, by King Joseph, of Portugal, for being concerned in the attempt upon his life by the Marchioness of Tavora, whose confessor he was, which attempt was a part of the plot of the Duc d'Aveiro against that king.<sup>1</sup>

The charge of stockjobbing against Lord Shelburne, alluded to in the text, was as widely believed as it was openly charged.

Lord Fitzmaurice, however, says: "The correspondence of Shelburne and Townsend at this period with Oswald, Strachey, and Fitzherbert,<sup>2</sup> reveals their constant anxiety to prevent the inventions of the numerous stockjobbers, who kept rapidly passing between London and Paris, and disseminating false news in both cities, from taking effect on the public mind. The speculators, aware of this, revenged themselves by spreading abroad a report that the Prime Minister himself had been taking advantage of his official knowledge to speculate, and the Opposition hacks were not ashamed to lend themselves to this disgraceful calumny. One of the most celebrated of Gillray's caricatures represents him with a booted and spurred French courier on his left just arrived from Paris, with the news that the Preliminaries were signed, and on his right, a group of Jews waiting to receive the payment of the sums supposed to have been lent on the security of Shelburne House, and about to be paid off with the results of successful stockjobbing."<sup>3</sup>

<sup>1</sup> Life of Shelburne. Vol. II., p. 165.

<sup>2</sup> The regular British Minister to France, appointed after the death of Rockingham by Lord Shelburne, his successor as Premier.

<sup>3</sup> Life of Shelburne. Vol. III., p. 292.

## NOTE XXXII.

THE COMMISSION OF THE BRITISH NEGOTIATOR, OSWALD,  
DRAWN BY JOHN JAY—THE FACTS OF THE CASE.*Vol. II., p. 237, Note I.*

JOHN JAY'S own account of the extraordinary fact stated in the author's note, is thus given in a letter from him to Gouverneur Morris, from Paris, dated 13th October, 1782 : "The King of Great Britain, by letters patent under the Great Seal, has authorized Mr. Oswald to treat with the Commissioners of the *United States of America*. His first commission literally pursued the enabling act,<sup>1</sup> and the authority it gave him was expressed in the very terms of that act, viz. to treat with the colonies, or with any or either of them, and any part of them, and with any description of men in them, and with any person whatsoever of and concerning peace, &c."<sup>2</sup> The King's warrant for Oswald's first commission was dated July 25, 1782. Franklin and Vergennes both thought that the commission then given would answer. Jay refused to treat under it, or any other that did not show on its face that the United States were one independent nation treating with another. He told Oswald the United States were independent already, and that they would treat with Britain only "on an equal footing." Subsequently *Oswald himself proposed* to Mr. Jay to draw a new commission which should show that fact. Jay did so, showed it to Franklin, and after the two had corrected it gave the draft to Oswald. It was dated August 15, 1782. Oswald at once sent a courier with it to London, but it was "the 24th of September," Mr. Jay says, before "he was informed of the intention of the British Court to give Mr. Oswald such a new commission as had been recommended."

<sup>1</sup>The act passed to permit British subjects to treat with the former American colonies.

<sup>2</sup>Jay's Life of Jay, Vol. II., p. 105.

It arrived by courier on the 27th of September, 1782. The business then began and continued till November 30th, 1782, when the preliminary articles were signed.<sup>1</sup>

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## NOTE XXXIII.

HOW THE NEW YORK LEGISLATURE NULLIFIED AND VIOLATED THE FIFTH ARTICLE OF THE TREATY OF PEACE OF 1783 PROVIDING FOR THE REPEAL OF CONFISCATION ACTS AND THE RESTITUTION OF ESTATES THEREBY AFFECTED—THE OFFICIAL RECORD—THE NAMES OF THE SENATORS AND ASSEMBLYMEN IN 1784—CHANCELLOR LIVINGSTON'S DESCRIPTION OF PARTIES AND OF THE NEW YORK CITY MEMBERS AT THAT TIME.

*Vol. II., A. 241.*

IN view of the author's thorough exposition of the bad faith of New York, in the matter of the recommendation of Congress to carry out Article V. of the definitive Treaty of Peace, in relation to the acts of confiscation, and the restitution of estates seized under them, the official record of this nefarious Legislative action is of interest.

*Extracts from the "Journal of the Senate of the State of New York."*  
*Page 14.*

"Friday Morning, January 30, 1784.

"The Senate met pursuant to Adjournment."

"A Message from his Excellency the Governor was received, and read in the Words following, *viz.*

"GENTLEMEN,

"IT is with Pleasure I embrace the earliest Opportunity of laying before you, a Proclamation of the United States in Congress as-

<sup>1</sup> Jay's letter to Robert R. Livingston, Secretary for Foreign Affairs, of Nov. 17, 1782, details the whole negotiation to that date.—Jay's Life of Jay, Vol. II., pp. 456-495.

sembled, under their Seal, dated 14th Day of *January* Instant, announcing the Ratification of the Definitive Articles of Peace and Friendship, between these States and his Britannic Majesty, and enjoining a due Observance thereof.

"I also submit to your Consideration the Recommendation of the United States in Congress assembled, in Conformity to the said Articles contained in their Resolution of the said 14th of *January* Instant.

NEW YORK  
30th *January*, 1784.

GEO. CLINTON."

"The Proclamation and Recommendation accompanying his Excellency's Message were also read."

"Ordered, That his Excellency's Message be committed to a Committee of the whole."

"Saturday Morning, March 27th, 1784.

"The Senate met pursuant to Adjournment."—Page 71.

"Resolved, That this Senate will on *Monday* Morning next, resolve itself into a Committee of the whole, on his Excellency the Governor's Message of the 30th of *January* last, accompanying the Ratification of the Definitive Articles of Peace."

"Monday Morning, March 29th, 1784.

"The Senate met pursuant to Adjournment."

"The Senate, according to Order, Resolved itself into a Committee of the whole, on his Excellency the Governor's Message of the 30th of *January* last, accompanying the Ratification of the Definitive Articles of Peace, and the Recommendation of Congress of the 14th of *January* last, pursuant to the 5th Article of the said Definitive Articles; after some Time spent thereon, the President resumed the Chair, and Mr. *Oouthoudt*, from the Committee, reported, That they had made some Progress therein, and that he was directed by the Committee, to move for Leave to sit again."

"Ordered, That Leave be given accordingly."

"Tuesday Morning, March 30th, 1784.

"The Senate met pursuant to Adjournment."—Page 75.

"On the Report of the Committee of the whole, to whom were referred his Excellency the Governor's Message of the 30th of *January* last, accompanying the Ratification of the Definitive Articles of Peace, and the Recommendation of Congress of the 14th of *January* last, pursuant to the Fifth Article of the said Definitive Articles."

"Resolved (if the Honorable House of Assembly concur herein), That it appears to this Legislature, that in the Progress of the late War, the Adherents of the King of *Great Britain*, instead of being

restrained to fair and mitigated Hostilities, which are only permitted by the Laws of Nations, have cruelly massacred without Regard to Age or Sex, many of our Citizens, and wantonly desolated, and laid Waste, a great Part of this State, by burning not only single Houses and other Buildings in many Parts of this State, but even whole Towns and Villages, and destroying other Property throughout a great Extent of Country, and in Enterprizes which had nothing but Vengeance for their Object.

"And that in consequence of such unwarrantable Operations, great Numbers of the Citizens of this State have, from affluent Circumstances, been reduced to Poverty and Distress."

"Resolved, That it appears to this Legislature, that divers of the Inhabitants of this State have continued to adhere to the King of Great Britain, after these States were declared Free and Independent; and persevered in aiding the said King, his Fleets and Armies, to subjugate these United States to Bondage.

"Resolved, That as on the one Hand the Rules of Justice do not require, so on the other, the public Tranquility will not permit, that such Adherents, who have been attainted, should be restored to the Rights of Citizenship.

"And that there can be no Reason for restoring Property, which has been confiscated or forfeited, the more especially as no Compensation is offered, on the Part of the said King, and his Adherents, for the Damages sustained by this State and its Citizens, from the Desolation aforesaid."

"Resolved therefore, That while this Legislature entertain the highest Sense of national Honor, of the Sanction of Treaties, and of the Deference which is due to the Advice of the United States in Congress assembled, they find it inconsistent with their Duty to comply with the Recommendation of the said United States, on the subject Matter of the Fifth Article of the said Definitive Treaty of Peace."

"Ordered, "That Mr. Schuyler carry a Copy of the preceding Resolution to the Honorable the House of Assembly."

"Friday Morning, April 2, 1784.

"The Senate met pursuant to Adjournment."—Page 81.

"A Message from the Honorable the House of Assembly (by Mr. Gordon and Mr. Lott) was received with a Resolution of the Concurrence of that Honorable House, to the Resolutions of the Senate of the 30th March last, on the Report of the Committee to whom were referred his Excellency the Governor's Message of the 30th of January last."

"Thursday Morning, April 15th, 1784.—Page 98.

"The Senate met pursuant to Adjournment.

"Ordered, "That Mr. Swartwout and Mr. Allison, wait upon his

Excellency the Governor, with a Copy of the concurrent Resolutions of the 30th and 31st *March* last, on the Recommendation of Congress on the Definitive Articles of Peace, and request him to transmit the same to Congress."

The following is the official list of the Senators and Assemblymen of the Legislature of 1784, of which the foregoing was the official action :

#### SENATORS.

##### SEVENTH SESSION.

At New York, began January 21; ended May 12, 1784.

*Clerks.*—Robert Benson, till February 18; Abraham B. Bancker.

*Southern District.*—James Duane, William Floyd, Ezra L'Homiedieu, Alexander McDougall, Lewis Morris, Isaac Roosevelt, Isaac Stoutenburgh, Samuel Townsend, Stephen Ward.<sup>1</sup>

*Middle District.*—William Allison Joseph Gasherie, John Harings, Thomas Palmer, Ephraim Palmer, Arthur Parks, Jacobus Swartwout.

*Eastern District.*—Alexander Webster, John Williams.

*Western District.*—Andrew Finck, Jacob G. Klock, Henry Outhoudt, Philip Schuyler, William B. Whitney, Abraham Yates, Jr.

#### ASSEMBLYMEN.

*Speaker.*—JOHN HATHORN, of Orange.

*Clerk.*—JOHN MCKESSON.

*Albany.*—Matthew Adgate, Abraham Becker, Abraham Cuyler, Jacob Ford, James Gordon, John Lansing, Jr., Peter Schuyler, Dirck Swart, Peter Van Ness, Christopher Yates.

*Charlotte.*—David Hopkins, Hamilton McCollister, Ebenezer Russell, Edward Savage.

*Cumberland.*—Joel Biglo, Elijah Proughty, William Shattuck.

*Dutchess.*—Dirck Brinckerhoff, Thomas Dennis, Anthony Hoffman, Cornelius Humfrey, Ebenezer Husted, Matthew Patterson, Thomas Stone.

*Gloucester.*<sup>2</sup>—(No returns.)

*Kings.*—Johannes E. Lott, Rutger van Brunt.

*New York.*—Robert Harpur, Henry Hughes, John Lamb, William Malcolm, Henry Rutgers, Isaac Sears, John Stagg, Peter P. van Zandt, Marinus Willett.<sup>3</sup>

<sup>1</sup> Term expired January 21, 1784.

<sup>2</sup> Subsequently, in 1791, made the State of Vermont.

<sup>3</sup> Appointed Sheriff, February 10, 1784, and seat vacated.

*Orange*.—Jeremiah Clark, Gilbert Cooper, John Hathorn, William Sickles.

*Queens*.—Benjamin Coe, Hendrick Onderdonk, Samuel Riker, James Townsend.

*Richmond*.—Adrian Bancker, Johannes van Wagenen.

*Suffolk*.—John Brush, David Gelston, Ebenezer Platt, Jeffrey Sweth, Thomas Youngs.

*Tryon*.—Abrahame Copeman, William Harper, James Livingston, Isaac Paris, Volkert Veeder, Christopher P. Yates.

*Ulster*.—John Cantine, Charles De Witt, James Hunter, John Nicholson, Cornelius C. Schoonmaker, Nathan Smith.

*Westchester*.—Abijah Gilbert, Samuel Haight, Zebediah Mills, Philip Pell, Ebenezer Purdy, Thomas Thomas.

Chancellor Robert R. Livingston thus describes parties, and the New York City members, to John Jay, in a letter written four days after the meeting of this Legislature, on January 25, 1784:

"Our parties are first, the tories who still hope for power, under the idea that the remembrance of the past should be lost, though they daily keep it up by their avowed attachment to Great Britain.

"Secondly, the violent Whigs, who are for expelling all tories from the State, in hopes, by that means, to preserve the power in their own hands. The third are those who wish to suppress all violences, to soften the rigour of the laws against the royalists, and not to banish them from that social intercourse which may, by degrees, obliterate the remembrance of past misdeeds; but who, at the same time, are not willing to shock the feelings of the virtuous citizens, that have at every expense and hazard, fulfilled their duty, by at once destroying all distinction between them and the royalists, and giving the reins into the hands of the latter; but who at the same time wish that this distinction should rather be found in the sentiments of the people than marked out by the laws.

"You will judge to which of these parties the disqualifications contained in our election bill has given the representative, when I tell you that the members for the City and County, are Lamb, Harper, Sears, Van Zandt, Mallone, Rutgers, Hughes, Stacy, and Willett.

"I must, however, do all parties the justice to say, that they profess the highest respect for the laws, and that, if we except one or two persons, they have as yet by no act contradicted that profession."<sup>1</sup>

The above Legislative action shows, that it was the second party, "*the violent Whigs*," as the Chancellor calls them,

<sup>1</sup> Life of Jay, Vol. II., p. 145.

who carried everything before them at the close of the Revolution, and permitted no treaty obligations whatever to deprive them of the revenge and profit they so fiercely sought.

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## NOTE XXXIV.

HOW THE FIFTH OF THE PRELIMINARY ARTICLES OF PEACE  
RELATIVE TO THE LOYALISTS WAS NEGOTIATED—IN-  
SERTED TO EFFECT THE SUCCESS OF THE TREATY—THE  
SIGNING OF THE PRELIMINARY ARTICLES ON THE 30TH  
OF NOVEMBER, 1782.

*Vol. II., p. 243.*

How the Fifth Article, stipulating that Congress should "earnestly recommend" the respective States "to provide for the restitution" of the confiscated estates of the Loyalists, both of those who had, and of those who had not, borne arms against the United States, and for the revision of the Confiscation Acts, and the restoration to their original owners of such estates as had been sold, on the latter repaying their cost to the purchasers, came to be inserted in the treaty is very curious. The bitter enemy of the Loyalists was Franklin. His personal animosity to England and the English, and the loyalty of William Franklin, his natural, and his only son, aggravating that animosity, caused him to treat them with great severity. On the 9th of July, 1782, at a personal interview with Oswald, Franklin gave him a *written outline* of the conditions of peace, which not only made no mention of the Loyalists, but he then distinctly told him "that nothing could be done in the treaty for the Loyalists, as their property had been confiscated by laws of particular States over which Congress had no authority; and he drew back from the suggestion which he had himself made in a previous conversation, that the cession of the back lands of Canada might be accom-

VOL. II.—32

panied by a stipulation in their favour." This position he steadily maintained.<sup>1</sup>

In October, 1782, after the victory over the French and Spaniards at Gibraltar, Lord Shelburne resolved "to attempt to gain a modification of the American demands, as well in favor of the English creditors and the Loyalists," as Oswald had previously yielded in conformity with the express directions of the British Cabinet. Hence, to relieve Oswald of responsibility he sent over Henry Strachey, Under Secretary to the Minister for the Colonies, as an additional negotiator for this express purpose, giving him written instructions, dated October 20, 1782.<sup>2</sup> By the 8th of November all questions had been settled except that of the Loyalists, and Strachey wrote Townshend, the Minister, he could see nothing for them except the back lands in Canada, and a little piece added to Nova Scotia;<sup>3</sup> and a day or two after he returned to London. While Strachey was in England, Oswald suggested to the American Commissioners, as they would not yield "restitution or compensation to the Refugees and Loyalists, that they might still add a clause to the treaty of recommendation to the Congress in their favor in general, but all to no purpose."<sup>4</sup> Strachey came again to Paris shortly after, and it was then agreed between Oswald and him, that they should try this suggestion again. How this was done, and its result, is thus told by Lord Edmund Fitzmaurice, Shelburne's grandson, writing from official and private papers, in his Life of his Grandfather.<sup>5</sup>

"On the 28th of November the negotiators met at Oswald's lodgings. Mr. Laurens, who had been exchanged for Lord Cornwallis, had now joined his colleagues, just in time to take a share in the final discussions. The interview began by Strachey clearly telling the American Commissioners that the restitution of the property of the Loyalists was the grand point upon which a final settlement depended. If the treaty should break off, the whole business must go loose and take

<sup>1</sup> Life of Shelburne, Vol. III., p. 245, which gives also the "outline" in full. See also Sparks's Franklin, Vols. IX. and X., for his views in full of the Loyalists.

<sup>2</sup> Ibid., 281.

<sup>3</sup> Ibid., 296.

<sup>4</sup> Ibid., 300.

<sup>5</sup> Ibid., 301.

its chance in parliament." The American Commissioners now practically stood alone,<sup>1</sup> and to a certain extent felt the consequences of their isolation. After long discussions they agreed that there should be no further confiscation of property, nor prosecutions of Loyalists, and that all pending prosecutions should be discontinued. They further practically accepted the idea which Oswald had put forward a few days previously; and it was agreed that Congress should recommend to the Legislatures of the several States an amnesty, and the restitution of all confiscated property. Some details as to fisheries and British creditors were then arranged. "There was now nothing further to settle. The only question was whether the English Commissioners could venture to sign without consulting their principals. Franklin was really anxious to conclude; on the other hand, he threatened that if there was any further delay he would re-open the question of the Loyalists, and the English Commissioners, knowing that they had everything to lose and nothing to gain by delay, decided to sign at once.<sup>2</sup>

This was on the 29th of November, and Mr. Adams, after giving in his diary the details of the discussions, says: "After hearing all this Mr. Fitzherbert (the regular British Minister at the time to France), Mr. Oswald, and Mr. Strachey retired for some time; and on returning, Mr. Fitzherbert said that, upon consulting and weighing everything as maturely as possible, Mr. Strachey and himself had determined to advise Mr. Oswald to strike with us, according to the terms we had proposed in our ultimatum respecting the fishery and the Loyalists. Accordingly, we all sat down and read over the whole treaty and corrected it, and agreed to meet to-morrow at Mr. Oswald's house,<sup>3</sup> to sign and seal the treaties, which the secretaries were, in the meantime, to copy fair."<sup>4</sup> The next

<sup>1</sup> This entire negotiation was concealed from the French ministry, directly contrary to the instructions of Congress to their envoys not to negotiate without the knowledge and consent of France, owing to Jay having no confidence in the French Government.

<sup>2</sup> Life of Shelburne, Vol. III., p. 302.

<sup>3</sup> This meeting on the 29th was held at Mr. Jay's lodgings at the Hotel d'Orleans.

<sup>4</sup> John Adams's Works, Vol. III., p. 335.

day, the 30th of November, 1782, after correcting a clerical error and inserting a stipulation Mr. Laurens then proposed, that the British troops should carry off no negroes or other American property, in the words of Mr. Adams, "the treaties were signed, sealed, and delivered, and we all went out to Passy to dine with Dr. Franklin."<sup>1</sup>

Franklin yielded as to the Loyalists, at last, because he and the other American Envoys knew that peace was a necessity for the United States, as they could not longer continue the contest.<sup>2</sup> And Oswald and the other English negotiators knew from Shelburne that his Cabinet could not meet parliament, which was to sit in a few days, without a negotiated treaty to lay before it. Parliament had been called for Nov. 25th, but was prorogued to December 5th, to give time to conclude the treaty. Shelburne really believed the Loyalists had been protected by this fifth article. The American Envoys knew that it could never be carried out.

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#### NOTE XXXV.

THE THREE LAWS NEW YORK ENACTED IN MAY, 1784, IN VIOLATION OF THE TREATY OF PEACE—TWO OF THEM PASSED OVER THE VETO OF THE COUNCIL OF REVISION BY MORE THAN A TWO-THIRDS VOTE—THE OBJECTS OF EACH—THE TRESPASS ACT OF MARCH, 1783.

*Vol. II., pp. 248-258.*

THE New York Legislature of 1784, followed up their Resolution rejecting the recommendation of Congress to fulfill the Treaty of Peace, and nullifying the treaty stipulations, the offi-

<sup>1</sup> John Adams's Works, Vol. III., p. 336.

<sup>2</sup> Hamilton to Jay, Life of Jay, Vol. II., p. 122. Schuyler to Jay, *Ibid.*, p. 149. Washington's Circular to the States of 4th May, 1782, Sparks, Vol. IX., p. 286.

cial record of which is given in the preceding Note, XXXIII., by passing *three* laws to prevent effectually any of the benefits conferred by the Treaty. The first, entitled, "*An Act for the Immediate Sale of certain forfeited Estates,*" passed the 6th of April, 1784, enacted "That Isaac Stoutenburg, Esq., one of the Commissioners of Forfeiture for the Southern District, shall forthwith, after the passing of this Act, sell, for Gold and Silver only, such Part of the real Estates forfeited to the People of this State, and situate in the City of New York, or in Kings County, and in such manner as he shall deem most beneficial for this State, to an Amount not exceeding Twenty thousand Pounds, any former law to the Contrary in any wise notwithstanding."<sup>1</sup>

The second law, entitled, "*An Act to Preserve the Freedom and Independence of this State, and for other purposes therein mentioned,*" was passed the 12th of May, 1784, and is the Act so fully discussed by the author on page 248. The object of its framers was, to keep the "violent whigs" in power, by making the "tories," who remained after the peace, and as many of the moderate men, who wished "to suppress all violences to soften the rigour of the laws against the royalists,"<sup>2</sup> as they could, *ineligible as voters*. Though the treaty protected the Loyalists from punishment after its date, for their active allegiance before it was made, this Act, in connection with those passed during the war, and lest unrepealed, created a perpetual banishment of them, although a law of June 30, 1778, allowed those obeying it to return, and be restored to all their rights.

The "Tories," or "Royalists," who remained at their homes, and on their property, during the British occupation, were not only a numerical majority of the inhabitants of New York, Westchester, Long Island, and Staten Island, but the only men who could fill the usual offices, required to be filled by law, as the Council of Revision state in their unanswerable

<sup>1</sup> This was aimed at the great de Lancey and Bayard estates in New York City, and the large Rapelye estate in Brooklyn.

<sup>2</sup> So styled by Chancellor Robert R. Livingston, in his letter of January 25, 1784, to John Jay, cited in Note XXXIII., *ante*.

"objection," or *veto* to the passage of the above law, which is as follows :

"The Council object to the Bill,

"First, Because, by the first enacting clause, the voluntarily remaining with the Fleets and Armies of the King of *Great Britain*, is made an offence highly penal ; Whereas, by the Known Laws of all Nations, Persons who remain with their Possessions when the Country is overrun by a conquering Army, are at least excused, if not justified ; and should our Laws be made to retrospect in a manner so directly contrary to the received opinions of all civilized Nations, and even the Known principles of common Justice, it will be highly derogatory to the honor of the State, and fill the minds of our fellow citizens with the Apprehension of suffering in future some heavy Punishment for that conduct which at present is perfectly innocent. Besides, was this bill free from the objections which lye against all retrospective and *ex post facto* laws, the inconveniencies which must unavoidably follow, should it become a Law of this State, are fully sufficient to show that it is totally inconsistent with the public good ; for so large a Proportion of the Citizens remained in the parts of the Southern District, which were possessed by the British Armies, that in most places it would be difficult, and in many absolutely impossible, to find Men to fill the necessary Offices, even for conducting Elections, until a New Set of Inhabitants could be procured.

"Secondly, Because the Persons within the several descriptions of offences enumerated in the first enacting clause, cannot be adjudged guilty of *Misprision of Treason*, but on conviction. \* \* \* \* \* This must be a Prosecution to be commenced by reason of the part the Defendant may have taken during the War, *directly in the face of the Sixth Article of the Definitive Treaty [of Peace]*, by which it is stipulated, "That no future prosecutions shall be commenced against any person, or persons, for, or by reason of, the part which he, or they may have taken in the War, and that no person shall on that account suffer any future Loss or Damages, either in his Person, Liberty, or Property."

"Thirdly, Because, by the second enacting clause of the said bill, the Inspectors and Superintendents of the Election are constituted a Court, they being by the said bill expressly authorized to inquire into, and determine the several Matters in the first enacting clause ; and their judgment is conclusive to disfranchise :

"This is constituting a New Court which does not proceed according to the course of the Common Law, and is especially against the Forty-first Section of the Constitution."

The Council of Revision, who signed the above unanswerable objection, were *Governor George Clinton, Chief Justice Lewis Morris, and Judge John Sloss Hobart*, than whom, no

three men could be better witnesses of the truth of the facts alleged, as they had personal knowledge of them, and no better lawyers than those two judges then lived, and the Governor himself was also a lawyer. Yet, so furious were the hate and passions of the hour, and so fierce the desire to clutch and keep power and profit, that the law was passed in both houses, in the teeth of the Council's objection which was not pretended to be answered, by a vote of "more than two-thirds of the members present," as the Journal states.<sup>1</sup>

The third law to nullify and violate the Treaty, was also passed on the 12th of May, 1784, and is entitled, "*An Act for the Speedy Sale of the confiscated and forfeited Estates within this State, and for other Purposes therein mentioned.*" It contains fifty-eight sections, and taken in connection with the vindictive laws passed during the war, *all of which were left unrepealed*, it rendered it perfectly impracticable for the attainted Loyalists to use the privilege guaranteed them by the treaty, to re-enter the State and repurchase their former estates, in accordance with its provisions. It also contains special grants of specified loyalist estates to Tom Paine, John Morin Scott, and John McKesson; permits the sons of John Watts to repurchase a lot and a farm in the city belonging to their father, on paying the appraised value of each in gold and silver; releases some lots of Thomas White to his widow on the same terms; sets apart the residence of the Honorable Henry White, late a Member of the Council, "for the Residence of his Excellency the Governor," and that of William Axtell "for the use of the Secretary of this State, as a depository of the Public Records thereof;" and makes two or three other reservations of the same kind in other parts of the State. This act was also passed over a veto of the Council of Revision.

The news of the signing of the Preliminary Articles of Peace arrived in America, at Philadelphia, on the 14th of March, 1783. It had been expected for some time previously. On the 17th of March—three days afterward—the New York

<sup>1</sup> The italics in the quotation are the editor's. The document appears in full on the Journals of both houses of the Legislature, Seventh Session.

Legislature passed an Act subjecting the Loyalists, and even the British officials, to prosecution by the Whigs in actions of trespass, for acts done under the rights of conquest, the law of nations, and the orders of the British Commanders-in-Chief. This was the famous "Trespass act," under which private authority vented itself, which was directly against the Treaty, and which the author has so thoroughly discussed on pages 251 to 254. It is Chapter XXXL of the Sixth Session, 1 Greenleaf's Laws, p. 62.

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#### NOTE XXXVI.

##### NUMBER OF THE LOYALISTS WHO LEFT THE COUNTRY PRIOR TO THE EVACUATION OF NEW YORK—SAVAGE ACTION OF THE WHIGS.

Vol. II., p. 260.

"NOT less than 100,000 souls" were sent from New York by Sir Guy Carleton prior to his evacuation of the city, says the text. These figures seem large, at first sight. It is not known on what data the statement is based. That many more left than originally intended to do so, in consequence of the savage treatment inflicted by the successful Americans, as the author states, and which treatment they threatened to increase in fury after the evacuation, is certain. "The violence in the Americans which broke out soon after the cessation of hostilities," writes Sir Guy Carleton to Elias Boudinot, of New Jersey, on the 17th of August, 1783, "increased the number of their countrymen to look to me for escape from threatened destruction; but these terrors have of late been so considerably augmented, that almost all within these lines conceive the safety of both their property and of their lives depend upon their being removed by me, which renders it impossible to say when the evacuation can be completed." \* \* \* \* "But, as the daily Gazettes and publications furnish repeated proofs, not only of a disregard to the Articles

of Peace, but [of] barbarous menaces from committees formed in various towns, cities, and districts, and even at Philadelphia, the very place which the Congress has chosen for their residence," Sir Guy tells him, that he should be wanting in humanity and honor to leave behind any Loyalists who desire to quit the country. "Congress," he continues, "will hence discern how much it will depend upon themselves, and the subordinate legislatures, to facilitate the service I am commanded to perform; by abating the fears they will thereby diminish the number of emigrants. But should these fears continue and compel such multitudes to remove, I shall hold myself acquitted from every delay in fulfilling my orders and the consequences that may result therefrom.<sup>1</sup> That the fears of the Loyalists were only too well-founded the following extracts from two letters, both written on the 22d Oct., 1783, clearly show; the first is from a gentleman in Newburgh, N. Y., to a friend in Boston, and the second from a gentleman at Fishkill, N. Y., to a friend at Woodbridge, N. J.:

"The British are leaving New York every day. Last week there came one of the dam<sup>d</sup> Refugees from New York to a place called Wall-Kill, in order to make a tarry with his parents, where he was taken into custody immediately; his head and eyebrows were shaved, tarred and feathered, a hog yoke put on his neck, and a cowbell thereon; upon his head a very high cap of feathers was set well plum'd with soft tar, and a sheet of paper in front, with a man drawn with two faces, representing Arnold and the Devil's imps; and on the back of it a card with the refugee or tory driving her off."

"By our latest accounts from New York we understand the tories are in great perplexity." \* \* \* "And from the associations which are formed and daily forming by the whigs they could expect nothing but rough handling the moment that the citizens were assembled. Such of the old tory party who remain will be the first objects of the popular rage, and the apostates who signed the association in 1775 and

<sup>1</sup> This and the subsequent letters, taken from the Pennsylvania Gazette and the papers of New York, are reprinted in the New York Corporation Manual of 1870, pp. 801, 815, 816, 826, and 837.

afterwards joined the British, with the traders and other strangers who have gone into New York in the course of the war, will be Noticed in their order.—Such, as I am informed, is the intention of the old citizens, and if it is necessary they will be supported by their friends from the Country; so that if any considerable number of obnoxious characters continue in the City, after the British give it up, there will be great confusion for a while, but no more than, all things considered, might be expected."

Another letter, written the day after the evacuation, the 26th, closes mildly as follows: "The City has been remarkably quiet. A few days will, I hope, produce a little scrutiny, when *TORIES* take care." Carleton's army, though it evacuated New York on the 25th of November, did not leave Staten Island, Long Island, and the Harbour, until the 4th of December. Six days after its final departure there appeared in the city papers the following polite card:

"A CARD.

"The exiled Whigs present their most respectful compliments to Messieurs *TORIES*, and beg leave to inform those sticklers for *British* tyranny, that with heart-felt satisfaction the late suffering Whigs find the old proverb fully verified, 'After a storm comes a calm.' The Whigs take the liberty to prognosticate that the calm, which the enemies of Columbia at present enjoy, will ere long be succeeded by a bitter and *neck-breaking hurricane*.

"New York, 10th December, 1783."

The consequence of this savage feeling and action of the Whigs was a tremendous increase of the emigration. The unfortunate loyalists came to New York from all quarters of America to embark for almost all parts of the world, for England, for Scotland, for Ireland, for Canada, for Newfoundland, for Cape Breton for Nova Scotia, for New Brunswick, for the Bermudas, for the Bahamas, for Florida, for Jamaica, and for the Lesser West India Islands. Those who had means formed companies and hired vessels themselves, those who had not were sent away in fleets of transports provided by the British Government. The papers of the day are full of advertisements of the sailing of the former, and of official notices re-

garding the latter. To two of the countries named above—Nova Scotia and New Brunswick (the latter of which was formed in 1784 from that part of Nova Scotia lying west of the Bay of Fundy)—the writer is satisfied, from a personal examination of the MS. Records in the Secretary's office at Halifax, that the emigration amounted to at least 35,000, men, women, and children.

The emigration to Upper Canada was immense, and so was that to the lower Province. The number who went to Great Britain and Ireland, especially the former, was very great. There is scarcely a town of any size in England and Scotland, where many expatriated Loyalists were not found for thirty years after the peace, and where their tombstones cannot now be seen. It is possible, therefore, that the author's statement may be very nearly, if not quite, correct. The army proper, including the released prisoners of war and the provincial forces, amounted, it is believed, to about 25,000, and the remainder of the 40,000, at which it and its followers is put by the author, were dependants of all kinds, male and female, including the entire force of the quartermaster's and commissary's departments of the army throughout America, and of the victualling department of the British fleet.

The emigration to Nova Scotia and New Brunswick began as early as 1782, three hundred having arrived at Annapolis-Royal in September of that year from New York.<sup>1</sup> About the same time Sir Guy Carleton notified Governor Hamond, of Nova Scotia, "that above 600 Refugees wished to embark at New York for Nova Scotia this autumn, and a much larger number in the spring, but that he could not find shipping just then for more than 300."<sup>2</sup> The next comers were some of the unfortunate Carolina Loyalists, who fled from Charleston at its evacuation. "I have the honor," says the Governor in a despatch of December 7, 1782, from Halifax, to the Right Honorable Thomas Townshend,<sup>3</sup> the Minister in England, "to inform you that, with the arrival here of the heavy ordnance from Charleston, in South Carolina, came five hun-

<sup>1</sup> Murdoch's History of Nova Scotia, Vol. III., p. 8.

<sup>2</sup> Ibid., p 8.

<sup>3</sup> Grandson of Charles, 2d Viscount Townshend.

dred and one Refugees, men, women, and children, in consequence of directions from Sir Guy Carleton to Lt. Gen. Leslie,<sup>1</sup> who has sent them to the care of Major Gen. Patterson, commander of the troops in this Province,<sup>2</sup> with whom I have concurred as far as in my power to afford them a reception."<sup>3</sup> In January, 1783, he notified him of further arrivals.

Six months later, on June 7, 1783, he informs him that, since his letter of the preceding January, "there have arrived in different places upwards of 7,000 persons, including men, women, and children, and these are to be followed by 3,000 of the Provincial forces, with several others, as I am informed, of a different denomination."<sup>4</sup>

On the 18th of May, 1783, arrived a great fleet with the New England Loyalists at Parrtown (as then called, after Governor Parr), now St. Johns, New Brunswick, "and anchored near Navy Island, in sight of the position where once stood De La Tour's Fort. To the right was the rocky peninsula, then covered with shrubs, scrubby spruce and marsh, now the home of above 30,000 people in comfortable homes, who never fail to commemorate [annually] the 'Landing of the Loyalists,' as a remarkable event in their city's history."<sup>5</sup> In September, 1783, in a letter dated the 30th of that month to Lord North, Governor Parr tells him that from November, 1782, to the end of July, 1783, "upwards of 13,000 persons had arrived at Annapolis, Halifax, Port Roseway, St. John's River, and Cumberland. Numbers had since landed at the before-named places, and at Passamaquoddy, the amount of whom he had not yet ascertained, but conjectured they would raise the total number to 18,000."<sup>6</sup> Two months later, on the 30th of November, in another letter to Lord North, he mentions that several ships have arrived with more of these

<sup>1</sup> Who commanded at Charleston.

<sup>2</sup> The same who, for a time, was Commandant of New York under Clinton.

<sup>3</sup> MS. Documents of Nova Scotia from 1751 to 1791, Scroll No. 117, Secretary's office at Halifax.

<sup>4</sup> Ibid. Scroll No. 119.

<sup>5</sup> Harper's History of New Brunswick, p. 94.

<sup>6</sup> Murdoch's History of Nova Scotia, Vol. III., p. 19.

people. He estimates them at 25,000.<sup>1</sup> "Many vessels," says Murdoch, "left New York for Nova Scotia in September, 1783, in which about 8,000 Loyalist refugees embarked. The ship *Martha* had on board a corps of the Maryland Loyalists and a detachment of the 2d De Lancey's. There were 174 persons on board. The vessel was wrecked on a ledge of rocks between Cape Sable and the Tuskets. 99 perished and 75 were saved by fishing boats and carried to St. John's River, on which they were to become settlers.<sup>2</sup> Of the terrible sufferings and hardships the Loyalists underwent, who came to Nova Scotia and New Brunswick, the history of these Provinces make sad mention. Suffice it to say here that they have never been paralleled since the persecutions of the Huguenots and their flight from France at the Revocation of the Edict of Nantes in 1685.

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#### NOTE XXXVII.

##### CARLETON'S COMMISSION OF 1782 TO SETTLE DEBTS DUE LOYALISTS SINCE NOVEMBER 1, 1776—ITS ACTION.

*Vol. II., p. 266.*

SIR GUY CARLETON'S Proclamation appointing this Commission, or Court, will be found in full in Note XVII. of this volume. Its last session was held about ten days prior to the evacuation of the city. Sir Guy's "adviser" referred to in relation to this commission was the William Smith so often mentioned in this history.

<sup>1</sup> Murdoch's History of Nova Scotia, Vol. III., p. 23.

<sup>2</sup> *Ibid.*, p. 24.

## NOTE XXXVIII.

THE NEW YORK ACT OF ATTAINER, OR CONFISCATION ACT,  
IN FULL.*Vol. II., p. 269.*

As this Act, so fully and thoroughly examined and discussed in Chapters XIV. and XV. of this volume, is difficult of access, being only found in "Greenleaf's Laws of New York from the First to the Twentieth Session Inclusive," Vol. I., p. 26, and in one or two other collections of laws, only to be seen in the largest public law libraries, it is here printed in full for the benefit of the general reader. It is Chapter XXV. of the Laws of the Third Session of the New York Legislature, and was passed on the 22d of October, 1779. The history of its origin and passage is given in the next note, Number XXXIX.

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LAWS OF THE STATE OF NEW YORK, PASSED IN THE THIRD SESSION OF  
THE LEGISLATURE, HELD AT KINGSTON, IN ULSTER COUNTY.CHAP. XXIV.<sup>1</sup>

*AN ACT for the Forfeiture and Sale of the Estates of Persons who have adhered to the Enemies of this State, and for declaring the Sovereignty of the People of this State, in respect to all Property within the same.*

Passed 22d October, 1779.

WHEREAS, during the present unjust and cruel war, waged by the King of Great Britain, against this State and the Preamble. other United States of America, divers persons holding or claiming property within this state, have voluntarily been adherent to the said King, his fleets and armies, enemies to this State and the said other United States, with intent to subvert the government and liberties of this state and the said other United

<sup>1</sup> Greenleaf's Laws of New York, p. 26.

States, and to bring the same into subjection to the crown of *Great Britain*; by reason whereof, the said persons have severally justly forfeited all right to the protection of this state, and to the benefit of the laws under which such property is held or claimed: *And whereas*, the public justice and safety of this state absolutely require that the most notorious offenders should be immediately hereby convicted and attainted of the offence aforesaid, in order to work a forfeiture of their respective estates, and vest the same in the people of this state; *And whereas*, the constitution of this state hath authorized the legislature to pass Acts of attainder for crimes committed before the termination of the present war.

*I. Be it therefore enacted by the People of the State of New York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That John Murray, earl of *Dunmore*, formerly governor of the colony of *New York*; William Tryon, Esq., late governor of the said colony; John Watts, Oliver De Lancey, Hugh Wallace, Henry White, John Harris Cruger, William Axtell, and Roger Morris, Esquires, *late members of the council of the said colony*;

Persons by name, *Ipsa Facto*, attainted of the offence of adhering to the enemies of the State, and their Estates forfeited to the People of this State.

George Duncan Ludlow, and Thomas Jones, late justices of the Supreme Court of the said Colony; John Tabor Kempe, late attorney-general of the said colony; William Bayard, Robert Bayard, and James De Lancey, now or late of the *City of New York*, Esquires; David Matthews, late Mayor of the said city; James Jauncey, George Folliot, Thomas White, William McAdam, Isaac Low, Miles Sherbrook, Alexander Wallace, and John Wetherhead, now or late of the said city, merchants; Charles Inglis, of the said city, clerk, and Margaret his wife; Sir John Johnson, late of the county of *Tryon*, Knight and Baronet; Guy Johnson, Daniel Claus, and John Butler, now or late of the said county, Esquires, and John Joost Herkemer, now or late of the said county, yeoman; Frederick Philipse, and James De Lancey, now or late of the said county of *Westchester*, Esquires; Frederick Philipse (son of Frederick) now or late of said county, gentleman; David Colden, Daniel Kissam the Elder, and Gabriel Ludlow, now or late of *Queen's* county, Esquires; Philip Skeene, now or late of the county of *Charlotte*, Esq.; and Andrew P. Skeene, son of the said Philip Skeene, late of *Charlotte* County; Benjamin Seaman, and Christopher Billop, now or late of the county of *Richmond*, Esquires; Beverly Robinson, Beverly Robinson the younger, and Malcom Morrison, now or late of the county of *Dutchess*, Esquires; John Kane, now or late of said county, gentleman; Abraham C. Cuyler, now or late of the county of *Albany*, Esq.; Robert Leake, Edward Jessup, and Ebenezer Jessup, now or late of the said county, gentlemen; and Peter Du Bois, and Thomas H. Barclay, now or late of the county of *Ulster*, Esquires; Susannah Robinson, wife of the said Beverly Robinson, and Mary Morris, wife of the said Roger

Morris; John Rapalje, of *Kings* county, Esq.; George Muirson, Richard Floyd, and Parker Wickam, of *Suffolk* county, Esquires; Henry Lloyd, the elder, late of the State of *Massachusetts Bay*, merchant; and Sir Henry Clinton, Knight, he, and each of them are hereby severally declared to be, *Ipsa Facto*, convicted and attainted of the offence aforesaid; and that all and

Their estates forfeited. singular the estate, both real and personal, held or claimed by them the said persons severally and respectively, whether in possession, reversion or remainder, within this State, on the day of the passing of this Act, shall be and hereby is declared to be forfeited to and vested in the people of this state.

**II. And be it further enacted by the authority aforesaid,** That the said several persons herein before particularly named, shall be and hereby are declared to be for ever banished from this State; and each and every of them, who shall at any time hereafter be found in any part of this State, shall be, and are hereby adjudged and declared guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

**III. And to the end,** That for the purpose aforesaid, convictions and attainders for the offence aforesaid, may, in pursuance of this act, be had against other offenders than those herein before particularly named; **Be it further enacted by the authority aforesaid,** That it shall and may be lawful for the grand jurors at any supreme court of judicature to be held for this state, or at any court of oyer and terminer and general goal delivery, or general and quarter sessions of the peace, to be held and for any county within this state, whenever it shall appear to such grand jurors by the oath of one or

Indictments to be found against persons either in full life, or deceased, in any county, without regard to that in which the offence was committed. Not necessary to state whether the offender is at the time in full life or deceased.

For the purpose of attainting other offenders.

That in every indictment to be taken in pursuance of this act, the offence or offences shall be charged to have been committed in the county where the indictment shall be taken, notwithstanding such offence or offences may have been committed elsewhere than in the county for which such grand jurors shall be summoned.

shall not be necessary to set forth specially, whether the several persons charged in such indictment were respectively deceased or in full life, or were reputed to hold or claim real or personal estate within this state. And on every such indictment shall be indorsed that the same was taken in pursuance of this act, and the day when the same was preferred into court.

*IV. And be it further enacted by the authority aforesaid, That whenever and as often as any such indictment shall be taken, against*

*any person or persons, the sheriffs of the respective*

*Notices of in-  
dictments to be  
published by the  
Sheriffs.*  
counties where such indictments shall be taken, shall forthwith cause notices thereof, agreeable to such form as is hereinafter mentioned, to be published in one or more of the public newspapers within this state, for at least four weeks.

*V. And be it further enacted by the authority aforesaid, That in every case of a neglect to appear and traverse agreeable to the sheriff's notice, the several persons charged in such indictment, whether in full life or deceased, shall respectively be and hereby are declared to be, and shall be adjudged guilty of the offences charged against them respectively. And the several persons who shall, in pursuance of this act, either by reason of such default, in not appearing and traversing as aforesaid, or upon trial, be convicted of the offence aforesaid, shall forfeit all and*

*Forfeiture  
thereon by De-  
fault or on con-  
viction, on Tra-  
verse, and judg-  
ment accordingly  
when the forfeited  
estates to vest in  
the people.*  
singular the estate, both real and personal, whether in possession, reversion or remainder, held or claimed by them respectively, within this state, to the people of this state; and judgment shall accordingly be awarded in the supreme court of this state, against the said persons respectively. And such forfeitures, as well of the estates which were at the time of their death, respectively, of persons deceased, as of persons in full life, at the time of conviction, shall be deemed to have accrued; and the estates accordingly attached to and vested in the people of this state, at and from the day charged in each respective indictment, most distant from the day of the taking thereof.

*Provided, nevertheless, That where a trial shall be had upon any such indictment, the forfeiture shall in such case be deemed to have accrued from the day to be found by the verdict of the jury, by which such persons shall be respectively convicted, most distant from the day of the taking of the indictment; any other day to be charged in the indictment notwithstanding. And provided*

*Proviso in fa-  
vour of persons  
pardoned.*  
*further, That the several persons who shall have been pardoned in pursuance of a declaration or ordinance of the convention of this state, passed the tenth day of May, in the year of our Lord one thousand seven hundred and seventy-seven, offering free pardon to such*

of the subjects of the said state, as, having committed treasonable acts against the same, should return to their allegiance ; or, in consequence of any proclamation or proclamations heretofore issued by the commander-in-chief of the army of the United States of America, may respectively plead their pardons to indictments, taken in pursuance of this act, in like manner as they might or could do to indictments for high treason, taken in the ordinary course of law.

*Proviso in favour of those who shall have taken the oath of allegiance before 4th of April 1778, before whom, and how to operate.*

And provided further, That each and every person, who shall at any time before the fourth day of April, in the year of our Lord, one thousand seven hundred and seventy-eight, have taken the oath of allegiance to this state, before the convention or councils of safety of this state ; or before the committee of the said convention, appointed for enquiring into, detecting and defeating all conspiracies, which may be formed in this state, against the liberties of America ; or the commissioners appointed for the like purpose, or a county, district or precinct committee ; shall and may plead such taking the oath of allegiance in bar to any indictment, to be taken in pursuance of this act, for offences committed before the day on which they respectively took such oath.

**VI. And be it further enacted by the authority aforesaid,** That all indictments to be from time to time taken in pursuance of this act, at any court of oyer and terminer, or general goal delivery, or general or quarter sessions of the peace, shall, by the clerk of the said courts, respectively be returned, under their respective hands and seals, into the supreme court of this state, and shall be tried at the bar of the said court ; and upon the trial of any such indictment, no greater number of witnesses shall be required than are required by law in cases of felony, without benefit of clergy.

**VII. And be it further enacted by the authority aforesaid,** That the several sheriffs shall, from time to time, respectively return, under their hands and seals, into the supreme court of this state, the several numbers of the newspapers containing the notices published by them respectively, there to remain as records of such notices, until judgments shall be had against the several persons named in such notices respectively.

**VIII. And to the end,** That in prosecutions for the offence aforesaid, in pursuance of this act, no advantage may be taken of mere matters of form ; and that the defendants may, notwithstanding, be fully apprized of the several matters charged against them ; in order

Prosecutions  
not to be affected  
by defects of  
form. Indict-

ments sufficient if generally charging Adherence to the enemy, fixing the times and places.

adhere to the enemies of this state, and the grand jurors shall,

The grand jurors to deliver into court the examinations of the witnesses. Defendants to have copies of Indictments and Examinations. upon the trial, be permitted to give evidence of any overt acts, other than such as shall be charged in such examination or depositions; and the clerks of the several courts of oyer and terminer, and general goal delivery, and general or quarter sessions of the peace, shall return such examinations or depositions, into the supreme court, in like manner as is herein before directed, with respect to indictments, taken at the courts of oyer and terminer, and general goal delivery, or general or quarter sessions of the peace.

**IX. And be it further enacted by the authority aforesaid, That besides the several matters by the law of England,**

**What overt acts shall be deemed evidence of High Treason.** declared to be evidence and overt acts of high treason, in adhering to the King's enemies, and which are hereby declared to be evidence and overt acts of high treason, in adhering to the enemies of the people of this state, as sovereign thereof; the following matters shall be, and are hereby declared to be evidence and overt acts of adhering to the enemies of the people of this state, whereon and for which persons may, in pursuance of this act, be indicted and convicted for the offence aforesaid; *that is to say*, Being at any time since the *ninth day of July*, in the year of our Lord, one thousand seven hundred and seventy-six (the day of the declaration of the independence of this state within the same), in any part of the United States, not in the power or possession of the fleets or armies of the King of *Great Britain*, and afterwards voluntarily withdrawing to any place within the power or possession of the King of *Great Britain*, his fleets or armies; or being apprehended by order of, or authority from the commander-in-chief of the armies of the said United States; or, of or from the provincial congress, or conventions, or committees thereof, or councils of safety of this state; or the commissioners above mentioned, appointed for enquiring into, detecting and defeating all conspiracies which may be formed in this state against the liberties of *America*; or county, district, or precinct

committees within this state ; or by the supreme executive authority of this state, and confined within certain limits upon engagement, by parole or otherwise, not to go beyond such limits, and breaking such engagements, and voluntarily escaping to any place in the power of the fleets or armies of *Great Britain* ; or being so confined as aforesaid, and afterwards permitted by proper authority to go to any place in the power of the fleets or armies of Great Britain, upon engagement to return within a certain given time ; and not returning within such time, but afterwards remaining at any place within the power or possession of the fleets or armies of *Great Britain*.

X. *And whereas*, divers persons, inhabitants and well affected subjects of this state, at the time of the declaration Preamble with respect to certain persons in the power of the Enemy. of the independence thereof, who had their fixed residence in the southern district of this state, were obliged, on the invasion of the said district by the enemy, to fly before their superior force, into parts of this, or some other or others of the said United

States, and some of them having thereby abandoned all or the greatest part of their property, were so reduced as to have been respectively obliged, through absolute necessity and the want of sufficient habitations and the necessary means of support and subsistence, to return to their respective places of abode ; and others of them, for the same cause, having deserted their habitations, and fled in manner aforesaid, have for particular reasons been permitted, either by the commander in chief of the armies of the said United States, or other lawful authority, in the places to which they respectively fled, to return within the power of the enemy, where they also severally still do reside ; *Be it therefore further enacted by the authority aforesaid, and it is hereby provided*, That nothing

*Exemptions in their behalf.* in this act contained shall be construed to extend or to affect the said persons, severally and respectfully, or any or either of them, except such of them

as since his, her or their return to any place or places within the power of the enemy, has or have done any act or thing, which in judgment of law would be construed, deemed and adjudged an adherence to the enemies of this state, and high treason against the people thereof, had such person or persons respectively, voluntarily and freely, and without any such cause as aforesaid, returned within the power of the enemy. In which case such return within the power of the enemy, and such act or thing as aforesaid, shall in judgment of law be construed, deemed, and is hereby declared to be adjudged an adherence to the enemies of the people of this state.

XI. *And be it further enacted by the authority aforesaid*, and it is hereby provided, That no conviction or attainder, No attainder under this law to exempt from punishment in ordinary course. in pursuance of this act, shall be construed to exempt any person or persons from being apprehended, tried, convicted, attainted and executed for high treason, according to the ordinary course of law.

**XII. And be it further enacted by the authority aforesaid,** That

**Conveyances since 9th July, 1776, by any of the parties attainted by this act to be presumed fraudulent.**

convicted or attainted of high treason, in the ordinary course of law, for offences committed during the present war, shall be presumed to be fraudulent and to have been made with intent to prevent a forfeiture of the estates by such conveyances or assignments respectively intended to be conveyed or assigned; and upon every trial,

**And proof of their being otherwise to lay upon the claimant.**

and not with intent to prevent a forfeiture as aforesaid.

**XIII. And be it further enacted by the authority aforesaid,** That

**Executory Devise and contingent remainders subjected to Forfeiture.**

claims, estates, or interests whatsoever.

**XIV. And be it further enacted by the authority aforesaid,** That

**Crown Lands, etc., vested in the People, and their Sovereignty and Seignory therein declared, from the 9th of July, 1776.**

due to the crown of Great Britain, be, and the same and each and every of them, hereby are declared to be, and ever since the said ninth day of July in the year of our Lord one thousand seven hundred and seventy-six, to have been, and forever thereafter shall be, vested in the people of this state, in whom the sovereignty and seignory thereof are and were united and vested, on and from the said ninth day of July, in the year of our Lord one thousand seven hundred and seventy-six.

**XV. And be it further enacted, by the authority aforesaid,** That

the person administering the government of this state for the time being, shall be, and he is hereby authorized

**Commissioners to be appointed for the sale of forfeited estates in each of the Great Districts of the State, at public vendue. How they are to proceed.**

**Amended and altered 4th sess., ch. 13 and 51; 5th sess., ch. 45; 7th sess., ch. 64.**

this state, containing a description as to the quantity, by estimation, of the lands or tenements to be sold, the situation thereof, and the name or names of the person or persons by the conviction and attainer of whom the said lands or tenements are deemed to have become forfeited ; and to make, seal and deliver to the purchaser or purchasers respectively, good and sufficient deeds and conveyances, in the land, to vest the same in them respectively, and their respective heirs and assigns, upon such purchaser or purchasers respectively producing such receipt from the treasurer, as is herein aftermentioned :

**That every such purchaser and purchasers shall, by virtue of such deeds and conveyances respectively,**

**Powers given commissioners by this act repealed, 7th sess., ch. 64, sec. 54.**

**other person or**

**Commissioners' Deeds to operate as Warranty Deeds.**

titles and incumbrances whatsoever ; and such purchaser or purchasers respectively, and their respective heirs and assigns, shall, in case of eviction, have such remedy and relief upon such warranty, in such manner as shall be more particularly provided for in such future act or acts of the legislature, as are hereinafter mentioned.

**Provided,** That the said commissioners shall not be authorized to sell any lands in larger parcels than the quantity of five hundred acres in each parcel ; that no more than one farm shall be included in one and the same sale ; and that the sales shall be made in the county where the lands or tenements

**Not to sell more than 500 acres in one parcel, and no more than one farm in one sale.**

to be sold respectively lie. *And provided further,* That nothing in this law contained shall be construed, deemed, es-

**No sales to be made before first October, 1780. Partly repealed by 3d session, ch. 51, passed 10th March, 1780.**  
teemed or adjudged to authorize the commissioners to be appointed by virtue hereof, to make sale of any of the lands, messuages, tenements or hereditaments hereby forfeited, or by virtue hereof to become forfeited, before or until the first day of *October* next; and that all such sales shall be, and the same hereby are wholly prohibited until that day.

**XVI. And whereas,** it is impossible at present to form an estimate of what will be a proper compensation to the said commissioners, for their services and expenses in executing the business hereby committed to them; *Be it therefore further enacted*

**Public Faith pledged to the commissioners for their pay and expenses by the Legislature.**  
*by the authority aforesaid,* That the public faith of this state shall be, and hereby is pledged to the said commissioners, for such allowance and compensation to them for their services and expenses (besides the expenses of surveyors, clerks, and other incidental charges) as shall hereafter by the legislature be deemed just and reasonable.

**XVII. And be it further enacted by the authority aforesaid,** That the treasurer of this state shall be, and he is hereby

**Not exceeding £2,000 advanced to the commissioners of each District for expenses.**  
authorized, out of the monies which now are, or hereafter may be in the treasury, to advance to the said commissioners for each district a sum not exceeding two thousand pounds, to defray the expenses of the business hereby committed to them.

**XVIII. And whereas,** in many instances, lands, the reversion or remainder whereof is or may become forfeited to this state, are possessed by tenants who have, at considerable expense, made or purchased the improvements on the same, and which tenants have certainly, uniformly and zealously, since the commencement of the present war, endeavoured to defend and maintain the freedom and independence of the United States; *Be it therefore further enacted by the authority aforesaid,* That where lands, the reversion or remainder whereof is hereby, or may become forfeited to the people of this state, shall be possessed by any tenant of the character above described, and who or whose ancestor, testator or intestate, shall have

**Provision in favor of tenants of forfeited lands.**  
made or purchased the improvements on the same, they shall continue in possession at their former rents, and be at liberty as heretofore, to transfer their improvements, until the fee simple of the said lands shall be sold, they paying their respective rents, and the present arrearages thereof in money, equal to the current prices of the articles of produce, in which their rents were heretofore paid, into the treasury of this state, if such rents were reserved in produce, or if reserved in money, then in so much money as will be equivalent

to the price of wheat at seven shillings per bushel ; and that when the fee simple of the said lands shall be sold by the commissioners, to be appointed in pursuance of this act, they shall cause such lands to be appraised by three appraisers, at what shall be deemed the then present value thereof, exclusive of the improvements thereon, at the time of appraising ; that one of the said appraisers shall be elected by the commissioners, another by the tenant claiming the benefit intended by this clause, and the third by the said other two appraisers ; that the said appraisers, previous to the making of such appraisement, shall each of them take an oath, and which oath the said commissioners are hereby authorized to administer, well and truly to appraise the lands held by such tenant, at what shall be deemed the then value thereof, exclusive of the improvements thereon ; and upon payment into the treasury by such tenant of the sum at which such lands shall be so appraised within three months after the making of such appraisement, together with all arrearages of rents then due thereon ; the commissioners shall convey the lands so appraised to such tenant, in like manner as if such lands had been sold at public vendue, and such tenant had appeared, and been the highest bidder for the same : *Provided*, That no person being a tenant himself, or of affinity or consanguinity to the tenant requiring such appraisement to be made, shall be an appraiser.

*XIX. And in order that the commissioners may be enabled to determine who are the proper objects of the benefit intended by the foregoing clause, Be it further enacted by the authority aforesaid,*

*How tenants to avail themselves of the above provision.* That no tenant shall be entitled to such benefits, unless he or she shall, within one month after the same shall be required of him or her by the said commissioners, produce to them a certificate to be subscribed by at least twelve reputable inhabitants of the county, of known and undoubted attachment to the American cause, to be approved of by the commissioners, and which inhabitants shall severally declare upon oath, the truth of the matter by them certified, before a justice of the peace of the county who is hereby authorized to administer such oath, certifying that such tenant hath constantly and uniformly, since the said ninth day of July, one thousand, seven hundred and seventy-six, demeaned himself or herself, as a friend to the freedom and independence of the United States ; and hath, as far forth as his or her circumstances would admit, taken an active and decisive part to maintain and promote the same.

*XX. And be it further enacted by the authority aforesaid,* That whenever the said commissioners shall, within their respective districts, make sale of any lands, either at public vendue or upon such appraisement as aforesaid, and the commissioners, and the person or persons to whom such sale shall be made, having reciprocally subscribed a memorandum or note, in

*Memorandums in writing to be made of all sales, and given to purchasers.*

writing, of such sale ; the commissioners shall immediately thereupon give to the person or persons to whom such sale shall be made, a certificate thereof, to contain the sum for which the lands purchased by such person or persons were sold, and if such sale was made upon such appraisement, then also of the arrearages of rent due on such lands. That the said person or persons to whom such certificates shall be given, shall, within three months from the date thereof, pay into the treasury of this state the sums in such certificates respectfully specified ; and the treasurer is hereby required and authorized to receive the same, and to give to the said person or persons paying, duplicate receipts for the monies by them respectively paid ; and the several persons to whom such receipts shall be given shall, upon their respectively producing and lodging with the said commissioners one of the said receipts, be entitled to deeds and conveyances for the lands by them respectively purchased.

**XXI.** And be it further enacted by the authority aforesaid, That the Commissioners for the respective districts, shall and may, in their own names, commence and prosecute any suit upon a contract for the sale of any estate against any person or persons who shall have subscribed such note or memorandum in writing thereof as aforesaid ; and all damages which shall be recovered by the said commissioners in such suits, shall be by them paid into the treasury of the state.

**XXII.** And be it further enacted by the authority aforesaid, That all purchases made at such vendues by the said commissioners, or any or either of them, or by any other person, to or for the use of them, or any or either of them, shall be null and void ; and that each commissioner, before he enters upon the execution of his office, shall appear before one of the judges of any of the counties within the district for which such commissioner shall be appointed, and take and subscribe the following oath, which such judge is hereby authorized and required to administer, viz. :

**I, A. B.,** appointed a commissioner of forfeiture, for the district, do solemnly and sincerely swear and declare in the presence of Almighty God, that I will faithfully and honestly execute the said office, in such manner as I shall conceive most for the benefit and advantage of the people of this state, according to the true intent and meaning of an act entitled "*An act for the forfeiture and sale of the estates of persons who have adhered to the enemies of this state, and for declaring the sovereignty of the people of this state, in respect to all property within the same.*"

**Form of the oath.**

**XXIII. And be it further enacted by the authority aforesaid, and**

No lands to be sold while in the power of the enemy.

it is hereby provided, That the said commissioners shall not be authorized to sell any lands which, at the time of the sale thereof, shall be within the power of the enemy, any thing herein before mentioned notwithstanding.

**XXIV. And be it further enacted by the authority aforesaid,**

The Treasurer, in his account of sales, to specify the Persons to whom the Estates respectively belonged, that debts due by them may be collected.

That the treasurer of this state shall, in his accounts of the moneys arising by sales of forfeited estates, specify the names of the several persons to whom the several estates immediately before the forfeiture thereof were deemed to belong, as the same shall appear from the certificate of the commissioners; To the end, That when the legislature shall, by future act or acts, to be passed for the purpose, provide for the payment of the debts due from the said persons respectively, the amount of the moneys arising from the sales of their respective estates may with the greater ease be ascertained.

**XXV. And be it further enacted by the authority aforesaid, That**

Forms of the several proceedings and conveyances under this law.

the forms of the several proceedings to be had in pursuance of this act, and of the deeds or conveyances, to be executed by the commissioners to be appointed in pursuance of this act, shall be as follows, that is to say :

*(The following forms are here omitted,—to wit :)*

“ Form of the Notices by the Sheriff.”

“ The Form of a Record where Judgment shall be entered by Default.”

“ Form of a Record where a Trial shall be had.”

“ Form of a General Verdict.”

“ Form of the Conveyances from the Commissioners.”

And that all the forms of Proceedings in Prosecutions for the offence aforesaid, to be had in pursuance of this Act,

Forms of proceedings not herein particularly described to be similar to those in cases of Felony without benefit of Clergy.

other than such as are hereby otherwise specially directed, shall be, as nearly as may be, similar to the forms of the Proceedings in cases of Felony without benefit of Clergy, except that the word, or words, “ Offence,” or “ Offences,” (as the case may be) shall be used instead of the word, or words,

“ Felony,” or “ Felonies,” and that when a Traverse

shall be put in by any person or persons claiming any Estate or In-

terest, under a person deceased as aforesaid, all and singular the Proceedings and Processes, shall, notwithstanding,

On Traverse by Representatives of a dead person, the Proceedings to be of the same form as if the respective persons charged in the several Indictments had been severally in full life, and had in their own respective proper Persons, appeared and traversed ; and for the want of such Traverse, as if such Person had made default in full Life.

**XXVI.** *And be it further enacted* by the authority aforesaid, That each and every person, or persons, claiming an Estate or Interest, under any person deceased, shall, and may, upon affidavits of such claim, and of the death of the person under whom such claim shall be made, to be read and filed in court, be admitted to traverse the indictments against the persons under whom they so respectively claim. That in every case of such traverse as last aforesaid, no trial shall be had thereon until after the expiration of the time herein before limited for putting in such traverse. That where two or more persons shall appear at one and the same time, and produce such affidavit, and thereupon apply to be admitted to traverse, the court may compel such persons to join in the traverse ; and that where any person or persons, so claiming as aforesaid, shall have been admitted to traverse, and shall have traversed accordingly, and any other person or persons shall afterwards apply to be admitted to traverse, the person or persons so afterwards applying having respectively produced such affidavit of a claim as aforesaid, shall, upon the trial of such traverse, be permitted to employ counsel, produce witnesses, sue forth subpoenas, for the attendance of witnesses, cross-examine the witnesses on the part of the state, and do every other act and thing, in and about a defence, in like manner, and as fully as the person or persons by whom the traverse shall have been put in.

After traverse any other person applying on affidavit, may be admitted to join in the defence.

do every other act and thing, in and about a defence, in like manner, and as fully as the person or persons by whom the traverse shall have been put in.

## NOTE XXXIX.

THE NEW YORK CONFISCATION ACT THE RESULT OF SIR JAMES JAY'S REVENGE ON THE GOVERNORS OF KING'S COLLEGE—NAMES OF THE GOVERNORS IT STRUCK AT—NAMES OF THE LEGISLATORS WHO ENACTED IT—HISTORY OF ITS PASSAGE, AND ITS DEFEAT BY THE COUNCIL OF REVISION—ITS RE-INTRODUCTION AND FINAL PASSAGE, OCTOBER 22, 1779—ITS SEVERE CONDEMNATION BY JOHN JAY—SIR JAMES JAY'S INTRIGUE TO RETURN TO HIS ALLEGIANCE TO THE KING IN 1782.

*Vol. II., p. 270.*

THE causes of Sir James Jay's animosity against the Governors of King's College, which led him to take the initiative in forcing the New York Confiscation Act through the Legislature, in 1779, are stated by the author on pages 224 to 226 of this volume, and referred to in Note XXVII., preceding, on "Sir James Jay and the Governors of King's College."

Sir James was appointed by the Assembly (in which the power was then vested) during its second session, and on the 16th of October, 1778, a Senator from the Southern District, in the place of Philip Livingston, deceased. His brother, Frederick Jay, was then a member of the Assembly; but his brother, John Jay, the Chief Justice, was not a Senator, as the author erroneously states, although he had been a prominent member of the New York Congress and Provincial Convention, which bodies preceded the erection of the State Government under the Constitution of 1777. Sir James continued a Senator till the end of the Fifth Session of the Legislature, on April 17th, 1782, when his term expired. The Confiscation Act was drawn by John Morin Scott, aided by Sir James Jay, the former also having some personal scores to settle with the leading loyalists, on account of his continued defeats in his efforts to be elected to the Assembly of the Colony, for some years prior to the Revolution.<sup>1</sup>

<sup>1</sup> Vol. I., p. 5, Note.

The Governors of King's College, whose names Sir James included in the Act, were Governor William Tryon, the Rev. Dr. Auchmuty, John Watts, Brig.-Gen. Oliver de Lancey, Henry White, John Harris Cruger, Judge Thomas Jones, Roger Morris, John Tabor Kempe, the Rev. John Ogilvie, D.D., Frederick Phillipse, the Rev. Charles Inglis, Charles Ward Apthorpe, and James DeLancey, of New York, fifteen, not "fourteen" as the text states; and the *wives* of two of them, Mrs. Charles Inglis and Mrs. Roger Morris, were also included.

The action of the Legislature referred to by the author, as stated in the Proceedings of the Senate and Assembly, and of the Council of Revision, is here given from their official printed Journals.

The first session of the Legislature of New York, for business, began at Kingston on the 9th of September, 1777.<sup>1</sup> The second session began at Poughkeepsie, on the 5th of January, 1778. The change of place and time is thus explained in the Journal of the Senate:

"POUGHKEEPSIE, IN DUTCHESS COUNTY,  
"MONDAY, JANUARY 5, 1778.

"About Noon on Tuesday, the seventh day of October last, News came by Express of the Reduction of Fort *Montgomery*, in the Highlands, and its Dependencies by the Enemy; And although this Senate thereafter adjourned to till Wednesday Morning, the Eighth of October last, yet so many Members of the Honorable the House of Assembly absented themselves on military Service, and for the necessary Care of their Families, in Consequence of that Event, that there were not a sufficient number of them left at *Kingston* to form a House for Business; which rendered the Meeting of the Senate, according to Adjournment, useless, and therefore the Senate ceased to attend on the public Business,

<sup>1</sup> It was called by Governor Clinton for the *first* of September, 1777, but it was the 9th before a quorum of the Senate, and the 10th, before a quorum of the Assembly, attended so that an organization could be effected.

until his Excellency the Governor thought proper to convene the Legislature by his Proclamation."<sup>1</sup>

The Governor's Proclamation, dated November 15th, 1777, called the meeting for the 5th of January, 1778, at Poughkeepsie, on which day a quorum of both houses was present, and business began. On the 4th of April they adjourned, and met again on June 9th, but no quorum was present till June 19th. Five days afterward, on the 24th of June, 1778, in the Senate, John Morin Scott introduced the bill to confiscate the property of the adherents of the old Government, the record in the Journal being as follows :

" Mr. Scott moved for leave to bring in a Bill, ' For Forfeitures and Confiscations, and for declaring the Sovereignty of the People of this State, in respect of all Property within the same.' Debates arose, and the Question being put on the said Motion, it passed in the affirmative, in Manner following, *viz.*

**For the AFFIRMATIVE**

|              |              |                |
|--------------|--------------|----------------|
| Mr. Scott,   | Mr. Pawling, | Mr. Parks,     |
| Mr. Floyd,   | Mr. Landon,  | Mr. L. Morris. |
| Mr. Webster, |              |                |

**For the NEGATIVE**

|            |                  |            |
|------------|------------------|------------|
| Mr. Platt, | Mr. R. Morris,   | Mr. Yates. |
| Mr. Smith, | Mr. Van Schaick, |            |

" *Ordered*, That leave be given accordingly. Mr. Scott, then according to leave, brought in the said Bill ; which was read the first time, and ordered to a second reading."<sup>2</sup>

Thus the bill was introduced by a vote of eight to seven, a bare majority of *one*. This diversity of opinion probably prevented its being called up again, as the session ended on the 30th of June, six days afterward, without further action upon it.

<sup>1</sup> Both Bodies fled from Kingston at the approach of "the Enemy," but this Senate entry amusingly preserves the dignity of the Senate at the expense of the Assembly. The Journal of the latter is silent on the subject, making no allusion to it whatever.

<sup>2</sup> Senate Journal, p. 115.

The first Meeting of the Second Session of the Legislature began at Poughkeepsie on the 13th of October, 1778. An election had been held since the first Session, and there had occurred one death, that of Philip Livingston, and one vacancy, that made by the election of Pierre Van Cortlandt of the Southern District as Lieutenant-Governor, which vacated his seat. The Assembly on the 16th of October by resolution chose Sir James Jay in place of Philip Livingston, deceased, and Isaac Stoutenburgh in place of Pierre van Cortlandt, elected Lieutenant-Governor, and the next day send the resolution to the Senate.

With these changes, and the new members who came in at the election, the Senate consisted of the following persons :

*For the Southern District.*—William Floyd, Sir James Jay, Knight, Jonathan Lawrence, Richard Morris, Isaac Roosevelt, John Morin Scott, William Smith,<sup>1</sup> Isaac Stoutenburgh.

*For the Middle District.*—Jonathan Landon, Arthur Parks, Levi Pawling, Zephaniah Platt, Henry Wisner, Jesse Woodhull.

*Eastern District.*—Ebenezer Russell.

*Western District.*—Rinier Mynderse, Jacob G. Klock, Dirck W. Ten Broeck, Anthony Van Schaick, Abraham Yates, Jr.

*Clerk.*—Robert Benson.

The Assembly was composed of the following persons, from the counties named.

*Speaker.*—Walter Livingston, of Albany.

*Clerk.*—John McKesson.

*Sergeant at Arms.*—Stephen Hendrickson.

*Doorkeeper.*—Richard Ten Eyck.

*Albany.*—Leonard Gansevoort, James Gordon, Walter Livingston, Stephen J. Schuyler, John Taylor, Jacobus Teller, Killian van Rensselaer, Robert van Rensselaer, Peter Vrooman, William B. Whiting.

*Charlotte.*—Albert Baker, Ebenezer Clark, David Hopkins, Elishamer Towser.

<sup>1</sup> Of Suffolk County, L. I.

*Cumberland*.—No returns.

*Kings*.—William Boerum, Henry Williams.

*New York*.—Evert Bancker, John Berrien, Abraham Brasher, Daniel Dunscomb, Robert Harpur, Frederick Jay, Abraham P. Lott.

*Orange*.—Jeremiah Clark, Benjamin Coe, Peter Ogilvie, Roeloff van Houten.

*Queens*.—Benjamin Birdsall, Benjamin Coe, Daniel Lawrence.

*Suffolk*.—David Gelston, Ezra L'Hommedieu, Burnet Miller, Thomas Tredwell, Thomas Wickes.

*Tryon*.—George Henry Bell, John Newkirk, Abraham van Horne, Peter Waggoner, Moses Younglove.

*Ulster*.—Andrew Bevier, Matthew Rea, Cornelius C. Schoonmaker, Nathan Smith, Johannis Snyder.

*Westchester*.—Joseph Benedict, Thaddeus Crane, Israel Honeywell, Jr., Ebenezer Lockwood, Zebediah Mills, Stephen Ward.

Three days after the meeting of the Legislature—on the 16th of October—on the motion of Evert Bancker, Sir James Jay was chosen by the Assembly to the Senate, in place of Philip Livingston, deceased, every member present voting for him, except Mr. Wickes, of Suffolk, who voted against him,<sup>1</sup> the next day, the 17th, the resolution of election was sent to the Senate, and its clerk was directed to notify him to take his seat at once. The second introduction of the Confiscation bill soon followed. Ten days later, on the 27th of October, the Journal of the Senate says, “Mr. Scott, from the Committee for the Purpose appointed brought in a Bill ‘For Confiscations and Forfeitures,’ which was at once read the first time and ordered to a second reading.” Four days afterward, on October 31st, a single petition, (the *only* one for such an act,) was presented (the Journal does not say by whom), “signed by Paul Schenck, and about four hundred and forty-eight others, freeholders and inhabitants of the County of Dutchess,”—the county in which Poughkeepsie was situated—“setting forth,” the Journal continues, “a

<sup>1</sup> Assembly Journals, p. 11.

variety of Reasons in Favor of passing a Law for the Confiscation and sale of the real and personal Property of the Enemies of this State, *and praying that such a law may pass the Legislature before the rising thereof.*<sup>1</sup>" It was referred to the Committee of the Whole.

This petition, evidently gotten up as an ostensible basis for the proposed action, came from Poughkeepsie, where this Legislature was then sitting, and its neighborhood. On the 5th of November, five days later, the Assembly passed a concurrent resolution to adjourn to the 2d Tuesday in January, 1779; this the Senate objected to, on the ground that they were "anxious to have passed into a Law during the present meeting of the Legislature," an Act for Confiscations and Forfeitures, "then depending before them."<sup>2</sup> They, however, finally yielded to the Assembly, and the next day, the 6th, adjourned to January, 1779. That Session, held also at Poughkeepsie, did not begin till the 27th day of January, 1779. On the 29th, the Senate found John Williams, one of their members, guilty of peculation and fraud by drawing United States money on false pay-rolls of the militia under his command, fabricated and signed by himself, and expelled him on the 8th of February.<sup>3</sup>

It was now determined to proceed first in the lower House, and on the 28th of January, 1778, Mr. L'Hommedieu brought in the bill of attainder in the Assembly, where it was read a first time, and ordered to a second reading, which it had on the 9th of February, and was referred to the Committee of the Whole. It was discussed on many different days in Committee, and finally reported with amendments, on the 26th of February, and passed, the next day, the 27th, and sent up to the Senate. On the 1st of March it was there read a first time, and ordered to a second reading, which it had the next day, and was then referred to the Committee of the Whole. It was discussed several different days in Committee, Sir James Jay in the chair all the time, and finally reported to the Senate, with amendments, and passed

<sup>1</sup> Senate Journal, p. 148.

<sup>2</sup> Ibid., p. 156.

<sup>3</sup> Ibid., pp. 159 and 166.

on the 9th of March, 1779, and returned to the Assembly by Mr. Wisner, the vote standing nine to six. The final debate on the 9th of March was long and sharp. In the course of it Mr. Yates moved that all the clauses subsequent to the eleventh—more than half the bill—be expunged, which was lost by a vote of 7 to 8; and Mr. Richard Morris then moved "*that the Names of such Persons in the Bill, as are not Known to have taken up arms against us, or been guilty of high Treason be expunged.*" This, which would have saved to their owners three-fourths of the estates confiscated by the bill, was lost by a similar vote of 7 in the affirmative, to 8 in the negative, the members voting being the same exactly on each motion. The Affirmatives were, Mr. Roosevelt, Mr. R. Morris, Mr. Smith,<sup>1</sup> Mr. Stoutenburgh, Mr. Yates, Mr. Van Schaick, and Mr. Ten Broeck, the ablest men in the body; the Negatives—the implacables—were Mr. Scott, Mr. Parks, Mr. Platt, Mr. Russell, Mr. Landon, Mr. Wisner, Mr. Pawling, Mr. Webster; the first of these, Mr. Scott, and Mr. Platt, being the only two of equal ability and standing with those on the other side. Sir James Jay was in the chair, and on the only question on which the vote was even—a motion to strike out the 15th section of the bill—he voted, with the implacables, in the negative, against the motion. The bill finally passed the Senate by a vote of *ten to six*, the former being the eight implacables above named, Mr. Van Schaick of the other side, who went over to them, and Sir James Jay; the latter the other six members above named.

Five of the six opponents of the bill were so indignant that they entered on the Journal of the Senate, over their own names, the following terse, severe, and forcible "dissent," a document evidently drawn by the caustic pen of Richard Morris :

"*Dissentients,*"

"*1st,* Because there is no Evidence, in the Judgment of the Dissentients, to convict of High-Treason many of the Persons in the Bill named.

<sup>1</sup> Of Suffolk.

"*2nd*, That, by the Bill, breaking a parole is one of the crimes for which the offender is *ipso Facto*, attainted of High-Treason ; This offence is not Treason by any Law of this State ; therefore this Bill creates the Crime, and adjudges the Offender at a breath. This is mixing the Legislative and Judicial powers of the Legislature, and exercising both at the same time.

"*3rd*, That by the Bill the several Persons therein named are *ipso Facto* convicted of High-Treason, and, by the same, pardoned so far as such Conviction affects their Lives, yet, by the said Bill, they are made subject to another Trial, which may work a second conviction. Therefore under this Law, a Person may be twice convicted of the same offence, notwithstanding he has been pardoned on the first Conviction.

"*4th*, Because the Bill extends to Objects that are beneath the attention of the Legislature, by means whereof, so many Persons are named in the Bill, and thereby made desperate, that it will, in some Measure, act the Part of a Recruiting Officer for the *British Army*.

"*5th*, That should the *British Army* leave *New York*, and have no intent to destroy the remainder of the City, there is the greatest Reason to believe the same will be destroyed in a Fit of Revenge, by some of the little Objects of the Bill : They will be safe, and it is well Known, that secret Revenge is the general Companion of little dastardly Minds ; such are the little Fugitives from their Country's Cause.

"*6th*, Should the *British Army* mean to destroy *New York*, they will probably take care to do it in such a Manner (making use of these little Objects) as to have it appear the effects of this Law, and thereby answer two Purposes, first, injuring their Enemies, and, secondly, souring the Minds of the subjects of this State against their Legislators.

RICHARD MORRIS,  
ISAAC ROOSEVELT,  
WILLIAM SMITH,  
ISAAC STOUTENBURGH,  
ABRAHAM YATES, JUN<sup>r</sup>.<sup>”</sup><sup>1</sup>

<sup>1</sup> Senate Journal, p. 202.

The Assembly, on receiving the bill the next day, the 10th of March, refused to concur with the Senate in "The several Amendments which consist in inserting the Names contained in the List Number *One*, delivered with this Resolution ; the several Amendments which consist in striking out the Names contained in the List Number *Two*, also delivered with this Resolution ;" and in another forbidding the sale of any Lands before the 1st of November next (1779). Unfortunately neither of these two "*lists*" are given in the Journals of either House, or we might have some more very strong light on the secret history of this Act. These Assembly resolutions were sent back to the Senate, instantly, and that Body on the self-same day, the 10th, *receded* from the above amendments, and returned the bill again to the Assembly, by a vote of *nine to seven*, the minority being the five "*dissentents*" above named and Messrs. Ten Broeck and Van Schaick, and the majority being the eight "*implacables*" above mentioned and Sir James Jay. The next day, the 11th, the Bill was returned to the Senate amended in accordance with the amendments concurred in by the Assembly, assented to by the Senate without a division, and returned again to the Assembly, who the same day directed it to be carried to the Council of Revision by Messrs. Whiting and Dunscomb, which they did. Two days later, on the 13th, which was Saturday, both Houses passed a resolution to adjourn finally, unless the Council of Revision "have business before them which requires a continuance of this Meeting of the Legislature," and then adjourned to *4 o'clock on Sunday afternoon, the 14th*.

On that day and hour, the Chancellor, Robert R. Livingston, appeared in the Assembly and delivered to the House on the part of the Council of Revision their *veto of the bill*, styled in the Journal, "*A Copy of their Objections to the Bill, entitled, An Act for Forfeitures and Confiscations and for declaring the Sovereignty of the People of this State, in respect to all the Property within the same,*" which was read twice, and "*postponed for further consideration.*" The next morning the bill and objections were read and discussed, and the

former passed over the veto and sent to the Senate by a vote of 28 to 9.<sup>1</sup> This being a vote of more than *two-thirds*, the Assembly, as far as it could, thus passed the bill into a law.

The 9 negatives, against the bill, were Messrs. Waggoner, Kilian Van Rensselaer, Bancker, Brasher, Tayler, Whiting, Jay (Frederick Jay, a brother of Sir James Jay), Hoffmann, and Dunscomb. The 28 affirmatives were, Messrs. J. Coe, Morehouse, Dodge, Cantine, Bevier, Benson, Van Houten, Snyder, Swartwout, Wickes, Gelston, B. Coe, Schoonmaker, Boerum, Rea, Williams, Harpur, Lott, Smith, J. Clark, L'Hommiedieu, Honeywell, Benedict, Birdsall, Lockwood, T. Crane, Mills, and Baker.<sup>2</sup>

The Senate met on Sunday merely *pro forma*, and immediately adjourned to await the Assembly's action on the veto. On Monday, the 15th, as soon as it received the veto, and the resolution of the Assembly overriding it, the Senate also passed the bill by a vote of *eight to seven*, which is thus stated in the Senate Journal :<sup>3</sup>

"The Senate divided in Manner following; viz.

That the Bill be a Law of this State.

|                |              |              |
|----------------|--------------|--------------|
| Mr. Scott,     | Mr. Wisner,  | Mr. Landon,  |
| Sir James Jay, | Mr. Parks,   | Mr. Pawling. |
| Mr. Russell,   | Mr. Webster, |              |

That the Bill be not a Law of this State.

|                  |                   |                 |
|------------------|-------------------|-----------------|
| Mr. Yates,       | Mr. Smith,        | Mr. R. Morris,  |
| Mr. van Schaick, | Mr. Stoutenburgh, | Mr. Roosevelt." |
| Mr. Ten Broeck,  |                   |                 |

This vote being a majority of *one* only, instead of the *two-thirds* required to pass a bill over the veto of the Council of Revision, the measure failed by reason of this lack of votes in the Senate, to the intense disgust of Mr. John Morin Scott, Sir James Jay, and the Assembly in general.

<sup>1</sup> Assembly Journals, p. 102.

<sup>2</sup> Ibid., p. 106.

<sup>3</sup> Page 214.

On the same day, however, after the above action, the Senate, by a vote not given, "*Resolved*, That a Bill" (with the same title) "be brought in at the next meeting of the Legislature," and "*Ordered*, That Sir James Jay, Mr. Platt, and Mr. Landon, be a Committee to prepare and bring in the same."<sup>1</sup> This resolution and that disapproving the Bill was sent to the Assembly. As soon as they were received, which was the same day, the 15th, in the afternoon, the Assembly at once, also, "*Ordered*, That a Committee be appointed to prepare '*A Bill* to confiscate and make sale of the Estates of Persons, who have adhered to the Enemies of this State,' and Messrs. Benson, Harpur, Dodge, Brasher, and Hoffman, be the Committee, and that they prepare and report the bill at the next meeting of the Legislature."

Thus ended in failure the first attempt at passing a Confiscation Act in New York. To the persistent efforts of the minority of the Senate this result was due, as they alone prevented the majority from passing the bill over the Veto of the Council of Revision.

That document,<sup>2</sup> one of the ablest of that day, demonstrates with the greatest force and vigor the extraordinary character, the injustice, and the illegality of the measure. It occupies nearly four of the folio pages of the printed Journals, and was presented to the Assembly by Chancellor Livingston in person, on Sunday, the 14th of March, 1779, as above stated, and to him, in all probability, owes much of its force, plain speaking, and irrefragable argument. He had no favorable feeling for the Loyalists, but he did not wish that one of the leading acts of the newly-born "State" should be a perpetual monument of private revenge, selfish greed, patent injustice, and bad law.

"The Council object to the said Bill," says this remarkable document,

"I. Because it is in some instances repugnant to those plain and immutable Laws of Justice, which no state can with Honor throw off.

<sup>1</sup> Senate Journal, p. 215.

<sup>2</sup> Assembly Journal, pp. 102-106; Senate Journal, pp. 211-214.

" II. Because it is obscure and contradictory, and founded upon principles which vary from, and clash with, each other.

" III. Because it, in many cases, tends to deprive the well affected Inhabitants of this State of their just Rights, and Subjects them to the grossest Oppressions, if the Commissioners should incline to abuse their Trust.

" IV. Because the Means for carrying it into Execution are inadequate to the End.

" V. Because it does not pay proper Attention to the Circumstances of the less Wealthy Subjects of the State, or to the Means of rendering the Forfeitures most beneficial to the Community."

As to the fourth clause convicting and attainting absent persons, *ipso facto*, of high treason, it says,

" This whole clause as it stands connected with those that precede it, is involved in such obscurity, that this Council are at a loss to affix to it any precise Meaning, since the only construction Which the Words Warrant is too remote from common Sense and Common justice, to be that which the Legislature intended it should bear." The Council therefore object to the clause and those immediately connected with it,—“ 1st. On account of their obscurity—2d. Because of their Manifest Injustice.”

" The Ninth clause of the said Bill forfeits the Real Property, Rents, Arrearages of Rents, &c., belonging to the Inhabitants or Subjects of Great Britain on the Ninth day of July, 1776,<sup>1</sup> or since;—To this the Council objects; 1st. Because it is impolitic and repugnant to the strict Rules of Justice. Civilized Nations, before a declaration of War, give notice to the Subjects of the States with whom they are at variance, to remove their Property.—The Reason operates More strongly at this great Revolution, from the close connection which heretofore subsisted between this State and the now Subjects of *Great Britain*, who, if not unfriendly in their Conduct, should be admitted to dispose of

<sup>1</sup> The day the Declaration of Independence was adopted by the New York Provincial Convention.

their Estates, or, what better Policy would dictate, to settle upon them.

" 2nd. Because it injures the National Character of the State, may occasion reciprocal Forfeitures, and lessen the emigration of People of Property from the British Dominions from whose imported Wealth greater Advantages might be expected, than from the Pittance produced by the Sale of their Lands.

" 3rd. Because it makes an ill return for the spirit and liberality with which our Cause has been defended by many worthy Patriots in the *British* Dominions; the provisional clause in their favor, being merely nugatory, promising nothing certain, and requiring proofs which it may be difficult or dangerous for the Subjects of another Power to make.

" 4th. Because it is vague and uncertain, the Words, Inhabitant *or* Subject, in the disjunctive, admitting of very great Latitude; under the last of which Names may be comprised every Inhabitant of this Country born in the *British* Dominions, who has not, by some decisive Act, renounced his former Allegiance to the King of *Great Britain*, and perhaps every other Person within the Enemy's protection, however involuntarily he may be so.

" The Council further object to the said Law;—

" Because it has no stated Principle, sometimes referring back the Forfeitures only to the 16th of *July*, 1776, thereby founding the right of Confiscation on the Law passed on that day.—In other cases going back to the 9th day of *July*, in the same year, and in cases of Conviction for Treason in another State, referring to the *time of the offence committed*, tho' possibly such Treason might have been prior to our Declaration of Independence."

To the third clause of the bill the Council object, because, " Powers are given to the Commissioners, which No free State ever entrusted to any Man, or body of Men whatsoever, *viz.*, An absolute and uncontrolled Right to deprive the good Subjects of the State of their Possessions, to turn them and their families out of their Houses, and to oblige them to contend by course of Law for the Inheritance of their Ances-

tors. And this too, not upon a solemn Trial by Jury (to which the Constitution entitles them) not upon a cool dispassionate Examination of Evidences, not even upon a reasonable presumption ; but Merely because the Estate so seized, was reputed to belong on the 9th of July, 1776, to the Persons named in the Bill ; which Reputation, the Commissioners themselves, or any other Person, may raise from malicious or interested Motives."

The document is dated, Poughkeepsie, March 14, 1779, and is signed by Governor George Clinton. The Council of Revision were Governor Clinton, Chancellor Robert R. Livingston, John Sloss Hobart, and Robert Yates, Justices of the Supreme Court. Chief Justice Jay, the only other member of the Council, was at this time in Congress at Philadelphia, and of course absent.

At the next session of the Legislature—the third—which met at Kingston on the 9th of August, 1779, the project was more successful. This time it was again deemed best to begin in the House. A quorum was not present until the 18th, and on the 6th of September following "An Act to confiscate and make Sale of the Estates of Persons who have adhered to the Enemies of this State" was introduced by Mr. Benson, read a first time, and ordered to a second reading ; which it had the next day, and was referred to the Committee of the Whole. It was discussed on several days, and on the 18th of September read a third time and passed and sent to the Senate, no vote upon it being recorded in the Journal, which simply says, "Resolved, that the bill do pass."<sup>1</sup>

In the Senate it was received on the 19th, read a second time, and referred to the Committee of the Whole on the 22d, and on October 7th read a third time, passed with some amendments, and sent back to the Assembly by William Floyd, no division being given in its Journal also.<sup>2</sup>

The Assembly received it on the 8th, and "*ordered* that the further consideration thereof be postponed to a future

<sup>1</sup> Assembly Journal, p. 30.

<sup>2</sup> Senate Journal, p. 36.

Day."<sup>1</sup> The future day proved to be the 18th, when the bill and amendments were agreed to, no vote being recorded in the Journal, returned to the Senate as amended, approved by the Senate, sent back to the House, and by it delivered to the Council of Revision. No divisions or votes upon it appear on the Journals of either house on its final passage, the mere fact of its passage being all that is recorded in each case. The Council of Revision *approved it*, without giving any reason for its action, on October 22d, 1779, and thus on that day it was finally enacted as a law. How, or by what means, it went through so easily at this Session, the Journals of the two houses give no information. After the severe and successful struggle against it at the preceding Session above stated, the result is very remarkable. The day it passed it was ordered by a joint resolution of both houses to be "printed in Hand bills," but *not in the newspapers*, as were some other Acts referred to in the same resolution. It was of course inoperative and of no effect until the independence of the United States was acknowledged by the Treaty of Peace in 1783, nearly four years after its passage. Then, notwithstanding the fifth article of that treaty practically required its abrogation, it was not only not repealed, but on the contrary was carried into immediate and remorseless execution.

Sir James Jay having been so prominent in securing the enactment of this Act of Attainder and Confiscation, it is both curious and instructive to read the contemporary view of it held by his brother, Chief Justice John Jay. Writing under date of "Aranjuez, 21 miles from Madrid, 6th May, 1780," to Governor George Clinton, he says: "An English paper contains what they call, but I can hardly believe to be, your Confiscation Act. *If truly printed, New York is disgraced by injustice too palpable to admit even of palliation. I feel for the honour of my country, and therefore beg the favor of you to send me a true copy of it; that if the other be false, I may, by publishing yours, remove the prejudice against you occasioned by the former.*"<sup>2</sup>

<sup>1</sup> Assembly Journal, p. 57.

<sup>2</sup> Jay's Life of Jay, Vol. I., p. 112.

Had the Chief Justice known, when writing this letter, that his correspondent had signed the first veto of the Act as a member of the Council of Revision, and, at the next session, had approved the very Act he so pointedly condemns, he might possibly have used still stronger language. What Clinton must have thought when he read John Jay's letter can only be left to the imagination. Judge William Jay, commenting on this letter of his father,<sup>1</sup> says, "The Confiscation Act referred to in the foregoing, was unfortunately authentic. Mr. Jay, in after life often spoke of it with strong indignation. He regarded the dispute with Britain as one which men might conscientiously take opposite sides; and while he was ever ready to adopt all proper measures for preventing the tories from injuring the American Cause, he abhorred the idea of *punishing* them for their opinions. His wish was that no estate should be confiscated, except such as belonged to those who had been either perfidious or cruel. By the Act alluded to, many were attainted who had been perfectly inoffensive; and he believed motives of avarice had led to their proscription. So much disgusted was he with the injustice and inhumanity of this law, that he always declined purchasing any property that had been confiscated by it."<sup>2</sup>

Sir James returned to England early in 1782 after his liberation by Carleton, and there had some communication with the British Ministry, but what is not exactly known. His "Narrative" presented to Congress in 1813, avers that he went to Europe to organize a naval movement against British commerce and British ports, a sort of privateering expedition. But it was believed by those in London who knew him, that his object was to make his peace with the Government and become again a loyal subject of the King.<sup>3</sup> His brother, Chief Justice John Jay, in a letter to Peter Van Schaack, of

<sup>1</sup> Life of Jay, Vol. I., p. 113.

<sup>2</sup> Had other prominent men of that day had the same high feeling, some New York fortunes might not have existed.

<sup>3</sup> The author, on page 226, says Carleton liberated him without taking his parole. In this "Narrative," however, Sir James says that he *was* paroled, and got exchanged after he arrived in England, but does not say for whom.

September 17, 1782, from Paris, in reply to one from Mr. Van Schaack of the 11th of the preceding August, in which this proceeding of Sir James was alluded to, thus speaks of it—" You mention my brother. If after making so much bustle in and for America, he has, as it is surmised, improperly made his peace with Britain, I shall endeavour to forget that my father has such a son."<sup>1</sup>

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#### NOTE XL.

**THE BOWERY ESTATE OF JAMES DE LANCEY IN 1775—ITS  
FORFEITURE BY THE ACT OF CONFISCATION—OFFICIAL  
ABSTRACT OF SALES, 1784 TO 1787 — PURCHASERS'  
NAMES AND PRICES IN FULL, AND THE AMOUNT RE-  
ALIZED.**

*Vol. II., p. 281.*

As a matter of local interest, and as an illustration of the working of the New York Act of Confiscation, which, according to Governor Jay, proscribed many from motives of avarice,<sup>2</sup> the following facts and official " Abstract of Sales " of the New York City estate of James de Lancey, who was included in the Act (as the text states, on the authority of a member of the Legislature which passed it) because he voted in General Assembly, in February, 1775, against approving the proceedings of the Congress of 1774, are here given. In Note XIX. of the first volume, on the Proceedings of that Assembly, will be found the vote alluded to, and the full political action and views of Mr. de Lancey; the latter well

<sup>1</sup> This extract is taken from a *MS.* copy of John Jay's letter made in 1802, by Judge Jonas Platt an intimate friend of both John Jay and Peter Van Schaack, and now in the possession of Mr. H. K. Averill, Jr., a great-nephew of Judge Platt. Mr. Van Schaack's letter and John Jay's answer are given in Jay's *Life of Jay*, pp. 159-162, but in each the allusion to Sir James is omitted, and without any asterisks to denote the omissions.

<sup>2</sup> Jay's *Life of Jay*, Vol. I., p. 113.

set forth in the "Representation and Remonstrance to the Commons of Great Britain," adopted by the Assembly, and sent to England, which he drew, and reported to the Assembly on the 16th of March, 1775.<sup>1</sup>

The vote referred to was on the 26th of January—not "February" as the author states, and stood *eleven* in the negative, to *ten* in the affirmative; the negatives being "Mr. Walton, Mr. Rapelje, Mr. de Lancey, Mr. Brush, Mr. Jauncey, Col. Phillipse, Col. Seaman, Mr. Kissam, Mr. Wilkins, Mr. Billopp, and Mr. Van Kleeck; the affirmatives, Col. Woodhull, Col. Schuyler, Mr. Clinton, Mr. Van Cortlandt, Mr. De Witt, Col. P. Livingston, Capt. Seaman, Col. Ten Broeck, Mr. Nicoll, Mr. Boerum."<sup>2</sup>

"The Representation and Remonstrance" was adopted, with a Petition to the King, and a Memorial to the House of Lords, on March 25th, 1775, and on the 3d of the succeeding April the Assembly finally adjourned.

About three weeks afterwards, Mr. de Lancey sailed for England on one of the summer visits he had for some years been accustomed to make, leaving his family at home, and his affairs in the hands of his agent, as usual. There he endeavored to oppose the arbitrary and oppressive course of the Ministry towards America. When he found that they had determined to compel the Americans to submit, he remained in England, as he would not take up arms against his native land. As matters grew darker, he eventually sent for his family, and never returned to America. The Act of Attainder forfeited his life if he did so, as well as confiscated his property for his opinions, and at the peace of 1783 it became in force.

Subjoined is *an official* "Abstract of Sales" of Mr. de Lancey's forfeited estate in the City of New York, signed by Isaac Stouterburgh and Philip van Cortlandt, the Commissioners of Forfeitures, acknowledged by them before James Duane, the Mayor of the City, and certified to by him under

<sup>1</sup> Vol. I., p. 521, and p. 539.

<sup>2</sup> Assembly Journals, January Session, 1775, p. 18. Note XIX. Vol. I., p. 510.

the city seal, on the 23d day of February, 1787. It is printed, for the first time, from the original MS. in the editor's possession, and shows the dates of the sales, the lands sold, the purchasers' names, and the prices paid. The names of the large purchasers will be easily recognized by all who are conversant with New York annals. Those of some of the smaller may not. "John Pessenger" a German from the Mohawk valley, was the butcher to whose care Washington confided Major Leitch, when mortally wounded in the skirmish at Harlem on the 16th of September, 1776, and whom when he came to New York as President, he made his purveyor. "Henry Ashdore," or "Ashdoor," as he signed it to his advertisement of a reward for a stolen horse in April, 1783, also a butcher, was the first of this German name in New York, now so well known under its Anglicized form of "Astor." He was a peasant from Waldorf, in Baden, and "came to New York with the British troops during the Revolutionary war, but after a short period managed to escape their service, and entered into that of the 'Art and mystery of Butchering.'"<sup>1</sup> Probably he was in one of the Hessian, or German, Regiments. He was a step-son-in-law of Pessenger, having married Dorothy, a daughter of his wife by her first husband. Under his auspices and advice, came to New York, just at the close of the war, in 1783, a youth of twenty, his youngest brother, the late John Jacob Astor, who died in 1848, the richest man of his day in America. The Fincks, also, were butchers, and the name is well known in that trade to this day; Forbes was a gunsmith, and Lyng a silversmith, both well-known tradesmen before the Revolution, as were several others. Some of these purchasers had been tenants of Mr. de Lancey and his father for many years.

The accompanying map is a reduced reproduction of Mr. de Lancey's MS. map, and the subjoined "Estimate" of value referring to it, is printed from the original MS., both in the editor's possession. The map numbers denote the premises on the different streets, and open parts of the estate, included in the same number in the "Estimate."

<sup>1</sup> Devoe's History of New York Markets, p. 185.

<sup>2</sup> Ibid. p. 160.

## HISTORY OF NEW YORK.

543

AN ESTIMATE OF THE ESTATE OF JAMES DELANCEY ESR OF THE PROVINCE OF NEW YORK  
IN NORTH AMERICA.

This Bowery Estate, in 1775 in the "Outward," comprised what are now, in 1877, the 10th, 13th, nearly the whole of the 11th, one-third of the 7th, and nearly a fourth of the 17th Wards of the City of New York, with a water-front of over a mile on the East River.

In 1877 it has a population of about 300,000 souls, and an assessed real estate value of upwards of sixty-three millions of dollars.

Included in the following "Abstract of Sales" are also the corner of Broadway and Liberty Street, which was sold in three lots, and the farm of "Little Bloomingdale," extending from and including the south-west angle of the Central Park, to the North River, so well known in New York, from the name of its purchaser, as "Somarindike's<sup>1</sup> Farm," of about thirty acres, and two or three small lots on the *west* side of the Bowery, not denoted on the map.

The Mansion House, a large, double, brick edifice, with extensive grounds and a drive leading to it under large trees, fronted the Bowery, and stood back nearly on the line of First Street, and between de Lancey and Rivington Streets. It was occupied as a hospital for the American troops in the summer of 1776, and subsequently, and during the war, by the British troops, for the same purpose.<sup>2</sup> On First Street stood Mr. de Lancey's running stable, and in Second Street a paddock for the horses, and near it a private track to train them. Jacob Arden and John Beck, butchers, and Blaize Moore, were Mr. de Lancey's tenants of the farm part of the estate, about 150 acres, used chiefly for grazing purposes. Orchard Street is so named from the large orchards on that part of the farm. Evert Byvanck held the part at Corlears Hook or "Crown Point," as it was termed, on a long lease for ship-yards, etc., and on Little Division, now Montgomery Street, was De-grashes' Rope-walk.

The names of some of the streets on the map have been changed. "Fisher" is now Bayard St.; "Pump" is now

<sup>1</sup> Somarindyk, or "Someldyk," now "Somarindike," was, before the war, a tenant of a small house of Mr. De Lancey's, which stood on the Bowery Road.

<sup>2</sup> It is shown better on the "Plan of the City in 1767," in the first volume.

Walker St.; "Eagle" is now Hester St.; "Bullock" is now Broome St.; "De Lancey's Square," or "The Great Square," as it was often called, which extended from Grand to Broome, and from Third to Essex, was, unfortunately for the future of the City, cut up into lots by the Commissioners, and sold, money, not health and beauty, being then desired. "First" is now Chrystie St.; "Second" is now Forsyth; "Third" is now Eldridge St. No streets were laid out through the blocks where Allen and Ludlow Streets now are. From Arundell Street to the East River no streets were laid out, all being farm or meadow land. On the highest part of Grand Street was "*Mount Pitt*," about two acres, the town-house and gardens of Judge Jones, the author of this history—built by him on land given to his sister Anne, the Judge's wife, by her brother, James de Lancey, in 1765, long before the Revolution. It was sold in 1785, under the Act of May 12th, 1784, by the Commissioners of Forfeiture, to Morgan Lewis, for £970, or 2,425 dollars. The house was removed to an adjoining street, and remained till late in this century. The name was given in honor of William Pitt, afterwards Lord Chatham, of whom Judge Jones was a great admirer, and is still perpetuated in the street now called Pitt Street.

The whole of the City property is embraced in the "Abstract," which follows, but not Mr. de Lancey's large estate in the different counties of the State. There were Commissioners of Forfeiture for the Eastern, Western, Middle, and Southern Districts. The first embraced what is now Washington County and Vermont; the second, Albany and Tryon Counties, including the Mohawk Valley; the third, the River Counties, and the last, New York and Long Island. And in each of these Districts his lands were sold.

(A.)

**AN ABSTRACT OF SALES OF THE FORFEITED ESTATE OF JAMES DELANCEY, Esq<sup>n</sup>.**  
*In the Southern District of the State of New York for Bills of the New Mission or Service.*

| Date of Sales.       | To whom Sold.   | Description.  | Price.   |
|----------------------|---|---|--|
| 1784<br>August 16th. | Philander Forbes.....<br>Ditto.....<br>Ann Winterton.....<br>Thomas McFarran.....<br>Henry Kipp.....<br>Isaac Roosevelt Esq <sup>n</sup> .....<br>Ditto.....<br>Nicholas Fish.....<br>Garret Abeel.....<br>John Quackenbos.....<br>Nicholas Romain.....<br>Edward Laight.....<br>John Quackenbos.....<br>Ditto.....<br>Garret Abeel.....<br>Ditto.....<br>Lewis Ogden.....<br>Ditto.....<br>Ditto.....<br>Ditto.....<br>Ditto.....<br>Isaac Roosevelt Esq <sup>n</sup> .....<br>Ditto.....<br>Mary Watkins..... | A Lot of Land situate on the Corner of Broadway and Little Queen Street.....<br>A Lot of Land adjoining the above Lot.....<br>A Lot of Land situate in Little Queen Street.....<br>16 Lots of Land situate on the West side of the Bowery Lane.....<br>A Lot of Land situate on the Westerly side of the Bowery Lane.....<br>28 Lots of Land situate on the Easterly side of the Bowery Lane.....<br>Twenty eight Lots situate as above.....<br>Thirty two Lots situate as above.....<br>The Place at Corlears Hook in possession of the Heir of Evert Byvaenk deceased.....<br>Thirty two Lots situate in the Out Ward.....<br>The Place at Corlears Hook commonly called De graaf's Ropewalk.....<br>The Rent and Reversion of twenty Lots of Land situate at Corlears Hook.....<br>A Lot of Land situate on the Point of Corlears Hook.....<br>A Lot of Land adjoining the above.....<br>A Lot of Land situate at Corlears Hook.....<br>A Lot of Land adjoining the above Lot.....<br>Twenty four Lots of Land situate in the Out Ward of the City of New York.....<br>Twenty four Lots of Land situate as above.....<br>Twenty four Lots situate as above.....<br>A House and Lot situate in Little Queen Street..... | 490<br>325<br>135<br>1700<br>165<br>1176<br>448<br>1000<br>500<br>608<br>3<br>810<br>750<br>470<br>420<br>360<br>110<br>6987.30<br>372<br>252<br>276<br>276<br>264<br>276<br>240<br>276<br>500 |
| 19th.                |   |   |  |
| 23.                  |   |   |  |
| 24th.                |   |   |  |

|  |  |  |      |          |
|--|--|--|------|----------|
|  |  |  | £405 |          |
|  |  |  | 245  |          |
|  |  |  | 80   |          |
|  |  |  | 72   |          |
|  |  |  | 65   |          |
|  |  |  | 70   |          |
|  |  |  | 80   |          |
|  |  |  | 384  |          |
|  |  |  | 95   |          |
|  |  |  |      | £3920.00 |
|  |  |  |      | 294      |
|  |  |  |      | 174      |
|  |  |  |      | 223      |
|  |  |  |      | 529      |
|  |  |  |      | 411      |
|  |  |  |      | 164      |
|  |  |  |      | 155      |
|  |  |  |      | 147      |
|  |  |  |      | 401      |
|  |  |  |      | 250      |
|  |  |  |      | 171      |
|  |  |  |      | 370      |
|  |  |  |      | 261      |
|  |  |  |      | 95       |
|  |  |  |      | 130      |
|  |  |  |      | 89       |
|  |  |  |      | 117      |
|  |  |  |      | 131      |
|  |  |  |      | £472.00  |
|  |  |  |      | 83       |
|  |  |  |      | 154      |
|  |  |  |      | 80       |
|  |  |  |      | 360      |
|  |  |  |      | 360      |
|  |  |  |      | 271      |

## ABSTRACT—Continued.

| Date of Sales.        | To whom Sold.                     | Description.                               | Price.    |
|-----------------------|-----------------------------------|--|-----------|
|                       |                                   |  | £   s   d |
| 1784<br>Septemb. 1st. | Peter Van Zandt.....              | Six Lots situate as above.....             | £260 .. . |
|                       | John Dietz.....                   | Two Lots situate as above.....             | 100 .. .  |
|                       | Henry Ripp.....                   | Three Lots situate as above.....           | 84 .. .   |
|                       | Luke C. Quick.....                | Six Lots situate as above.....             | 342 .. .  |
|                       | William Snyder.....               | Four Lots situate as above.....            | 213 .. .  |
|                       | Moses Sherwood.....               | Two Lots and an half situate as above..... | 149 .. .  |
|                       | David Morris.....                 | Two Lots and an half situate as above..... | 150 .. .  |
|                       | David Campbell.....               | Two Lots situate as above.....             | 170 .. .  |
|                       | Ephraim Cromwell.....             | A Lot situate as above.....                | 41 .. .   |
|                       | Catharine Schup.....              | A Lot situate as above.....                | 34 .. .   |
|                       | Elizabeth Conradt.....            | Four Lots situate as above.....            | 160 .. .  |
|                       | Peter Van Zandt.....              | Two Lots situate as above.....             | 44 .. .   |
|                       |                                   |  | £3055.00  |
| 9th.                  | Leonard Fisher.....               | A Lot of Land situate in the Out Ward..... | 25 .. .   |
|                       | John Quackenbos.....              | Three Lots situate as above.....           | 81 .. .   |
|                       | Francis Dominick.....             | Six Lots situate as above.....             | 355 .. .  |
|                       | George Tilford.....               | Six Lots situate as above.....             | 207 .. .  |
|                       | Philip Vicker.....                | Two Lots situate as above.....             | 80 .. .   |
|                       | Peter Webbers.....                | Four Lots situate as above.....            | 90 .. .   |
|                       | Jacob Mordecai.....               | Two Lots situate as above.....             | 66 .. .   |
|                       | Peter Kettletas.....              | Two Lots situate as above.....             | 66 .. .   |
|                       | Abr <sup>m</sup> Brickerhoff..... | Four Lots situate as above.....            | 88 .. .   |
|                       | Henry Will.....                   | Three Lots situate as above.....           | 90 .. .   |
|                       | Ditto.                            | Five Lots situate as above.....            | 125 .. .  |
|                       | John Saunders.....                | Two Lots situate as above.....             | 102 .. .  |
|                       | Elizabeth Ganiz.....              | Two Lots situate as above.....             | 41 .. .   |
|                       | John Quackenbos.....              | Four Lots situate as above.....            | 90 .. .   |
|                       | Christian Cauff.....              | Four Lots situate as above.....            | 108 .. .  |
|                       | Henry Timerman.....               | Four Lots situate as above.....            | 126 .. .  |
|                       | Margaret Jordan.....              | Two Lots situate as above.....             | 48 .. .   |

|  |                                  |  |                   |  |
|--|----------------------------------|--|-------------------|--|
|  |                                  |  | 92                |  |
|  |                                  | <i>£1079,0,0</i>   |                   |  |
|  |                                  |  |                   |  |
|  | Mary Klein.....                  | Four Lots situate as above.....                                  |                   |  |
|  | Michael Leopold .....            | Two Lots of Land situate in the Out Ward.....                    | 45                |  |
|  | Mrs: Copelet .....               | Four Lots situate as above.....                                  | 102               |  |
|  | Coenradt Errenfreid .....        | A House and Lot situate on the West side of the Bowery Lane..... | 106               |  |
|  | Dorothy Tournelong .....         | A House and Lot situate as above.....                            | 65                |  |
|  | Edward Mooney .....              | A House and three and an half Lots situate as above.....         | 320               |  |
|  | Peter Meseir .....               | Six Lots situate in the Out Ward.....                            | 359               |  |
|  | Dederick Hoyer .....             | A House and two Lots situate as above.....                       | 310               |  |
|  | John Hoffman .....               | Two Lots situate as above.....                                   | 69                |  |
|  | Ditto. ....                      | Four Lots situate as above.....                                  | 51                |  |
|  | Nicholas Harrey .....            | Two Lots situate as above.....                                   | 60                |  |
|  | Martin Eagle .....               | Two Lots situate as above.....                                   | 46                |  |
|  | Cornelius Bradford .....         | Two Lots situate as above.....                                   | 62                |  |
|  | Rich <sup>a</sup> Anderson ..... | Two Lots situate as above.....                                   | 62                |  |
|  | Will <sup>b</sup> Beekman .....  | Two Lots situate as above.....                                   | 52                |  |
|  | Francis Dominick .....           | Eight Lots situate as above.....                                 | 152               |  |
|  | Ditto. ....                      | Eight Lots situate as above.....                                 | 136               |  |
|  | Ezekiel Robins .....             | Six Lots situate as above.....                                   | 212               |  |
|  | George Workhart.....             | Eight Lots situate as above.....                                 | 131               |  |
|  |                                  |  | <i>£2359,10,0</i> |  |
|  | Michael Varrian .....            | Six Lots of Land situate in the Out Ward.....                    | 100               |  |
|  | John Saunders .....              | Six Lots situate as above.....                                   | 110               |  |
|  | Ditto. ....                      | Six Lots situate as above.....                                   | 150               |  |
|  | John Hembrow .....               | Eight Lots situate as above.....                                 | 150               |  |
|  | George Janeway .....             | Six Lots situate as above.....                                   | 120               |  |
|  | Henry Coulz .....                | A Lot situate as above.....                                      | 186               |  |
|  | Albertus Vandewater .....        | A Lot situate as above.....                                      | 32                |  |
|  | Ditto. ....                      | Two Lots situate as above.....                                   | 25                |  |
|  | William Beekman .....            | Twenty two Lots situate as above.....                            | 60                |  |
|  | Ditto. ....                      | Ten Lots situate as above.....                                   | 572               |  |
|  | Margaret Peno .....              | Six Lots situate as above.....                                   | 250               |  |
|  | John Hembrow .....               | Four Lots situate as above.....                                  | 99                |  |
|  | Ditto. ....                      | Four Lots situate as above.....                                  | 72                |  |
|  | Albertus Vandewater .....        | Four Lots situate as above.....                                  | 82                |  |
|  |                                  |  | 128               |  |

Septemb 9th.

13th.

20th.

## ABSTRACT—Continued.

| Date of Sales. | To whom Sold.                 | Description.                                       | Price.       |
|----------------|-------------------------------|--|--------------|
|                |                               |  | \$   s   d   |
| 1784           |                               |  |              |
| Sept. 20th.    | Alexander Finch . . . . .     | Fourteen Lots situate as above . . . . .           | \$ 392 : : : |
|                | Ditto . . . . .               | Fourteen Lots situate as above . . . . .           | 392 : : :    |
|                | Albertus Vandewater . . . . . | Six Lots situate as above . . . . .                | 392 : : :    |
|                | Bartholemew Lobson . . . . .  | Six Lots situate as above . . . . .                | 108 : : :    |
|                | William Beekman . . . . .     | Six Lots of Land situate in the Out Ward . . . . . | 96 : : :     |
| 21st           | William Arnold . . . . .      | Four Lots situate as above . . . . .               | 108 : : :    |
|                | Albertus Vandewater . . . . . | Sixteen Lots situate as above . . . . .            | 58 : : :     |
|                | Daniel Pendleton . . . . .    | Sixteen Lots situate as above . . . . .            | 400 : : :    |
|                | John Quackenbos . . . . .     | Four Lots situate as above . . . . .               | 320 : : :    |
|                | Albertus Vandewater . . . . . | Sixteen Lots situate as above . . . . .            | 96 : : :     |
|                | Marinus Willett . . . . .     | Thirty two Lots situate as above . . . . .         | 276 : : :    |
|                | John Quackenbos . . . . .     | Sixteen Lots situate as above . . . . .            | 512 : : :    |
|                | Lewis Ogden . . . . .         | Twenty eight Lots situate as above . . . . .       | 328 : : :    |
|                | Ditto . . . . .               | Twenty eight Lots situate as above . . . . .       | 392 : : :    |
|                | Ditto . . . . .               | Twenty eight Lots situate as above . . . . .       | 392 : : :    |
|                | John Keating . . . . .        | Four Lots situate as above . . . . .               | 392 : : :    |
|                | John Quackenbos . . . . .     | One Lot situate as above . . . . .                 | 50 : : :     |
|                | Morgan Lewis . . . . .        | Thirty two Lots situate as above . . . . .         | 159 : : :    |
|                | Ditto . . . . .               | Thirty two Lots situate as above . . . . .         | 390 : : :    |
|                | Ditto . . . . .               | Thirty two Lots situate as above . . . . .         | 354 : : :    |
|                | Peter Orhive . . . . .        | Four Lots situate as above . . . . .               | 34 : : :     |
|                | Philip Ebert . . . . .        | Eight Lots situate as above . . . . .              | 80 : : :     |
|                |                               |  | 144 : : :    |
|                | William Beekman . . . . .     | Twelve Lots situate in the Out Ward . . . . .      | \$ 4065.00   |
|                | Ditto . . . . .               | Ten Lots situate as above . . . . .                | 372 : : :    |
|                | John Ebert . . . . .          | A House and four Lots situate as above . . . . .   | 310 : : :    |
|                | Elizabeth Wendall . . . . .   | A House and two Lots situate as above . . . . .    | 150 : : :    |
|                | Charity Miller . . . . .      | Five Lots situate as above . . . . .               | 58 : : :     |
| Sept. 30th.    | John Somarindyk . . . . .     | A Farm situate at Bloomingdale . . . . .           | 90 : : :     |
| October 16th.  |                               |  |              |
| 19th.          |                               |  | 300 : : :    |

## HISTORY OF NEW YORK.

551

ABSTRACT—*Continued.*

| Date of Sales. |                          | Description.   | Price.    |    |
|----------------|--------------------------|--|-----------|----|
|                |                          |  | \$        | d  |
| 1786           | Cornelius Ray .....      | Eight Lots situate as above .....                                  | £152      | .. |
|                | Ditto .....              | Eight Lots situate as above .....                                  | 108       | .. |
|                | George Fisher .....      | Eight Lots situate as above .....                                  | 160       | .. |
|                | Ditto .....              | Eight Lots situate as above .....                                  | 240       | .. |
|                | Cornelius Bradford ..... | Five Lots situate as above .....                                   | 56        | .. |
|                | Isaac Roosevelt .....    | Four Lots situate as above .....                                   | 88        | .. |
|                | Ditto .....              | Four Lots situate as above .....                                   | 64        | .. |
|                | Ditto .....              | Twenty four Lots situate as above .....                            | 408       | .. |
|                | James Blanchard .....    | The Land in his posse situate at Corlears Hook .....               | 465       | .. |
|                | John R. Meyer .....      | Five Lots situate in the Out Ward .....                            | 65        | .. |
|                | Ditto .....              | Four Lots situate as above .....                                   | 48        | .. |
|                | James Smith .....        | Eight Lots situate as above .....                                  | 72        | .. |
|                | Henry Tenbrook .....     | Four Lots situate as above .....                                   | 58        | .. |
|                | Ditto .....              | Four Lots situate as above .....                                   | 58        | .. |
|                | William A. Forbes .....  | A Lot of Ground situate on the Easterly side of the Broadway ..... | 300       | .. |
|                | Abraham Cannon .....     | Sundry Lots of Land situate at Corlears Hook .....                 | £2572,0,0 | .. |
|                | Joseph Stringham .....   | Twelve Lots situate as above .....                                 | £436,0,0  | .. |
|                |                          | Total .....  | £46,341   | 10 |
|                |                          | All the foregoing were Sold at Public Vendue.                      |           |    |
|                |                          | ( B. )   |           |    |
|                |                          | The following were Sold by Appralement.                            |           |    |
|                | 1784 Dec. 7th            | Six Lots situate in the Out Ward .....                             | 300       | .. |
|                | 1786 Sep. 9th            | The half of two Lots situate as above .....                        | 40        | .. |
|                |                          | The half of two Lots situate as above .....                        | 80        | .. |
|                |                          | The half of two Lots situate as above .....                        | 80        | .. |
|                |                          | Total .....  | £500,0,0  | .. |

( C. )

AN ABSTRACT OF SALES OF THE FORFEITED ESTATE OF JAMES DELANCEY ESQURE  
*in the Southern District of the State of New York for Public Securities.*

| Date of Sales.        | To whom Sold.  | Description.  | Price.   |
|-----------------------|--|---|--|
|                       |  |   | £ s d  |
| 1785<br>January 10th. | Marius Willett.....<br>Ditto.....<br>John Quackenbos.....<br>Ditto.....<br>Ditto.....<br>Ditto.....<br>Nicholas Fish.....<br>Ditto.....<br>Ditto.....<br>Ditto.....<br>Ditto.....<br>Ditto.....<br>Ditto.....<br>Joseph Hallett.....<br>Daniel Phoenix.....<br>Morgan Lewis.....<br>Ditto.....<br>Ditto.....<br>Ditto.....<br>Ditto.....<br>Ditto.....<br>Ditto.....<br>Ditto.....<br>John Lawrence.....<br>John Quackenbos.....<br>Marius Willett.....<br>William Denning.....<br>Philip Jacobs.....<br>Daniel Shaw ..... | A Lot of Land situate at Corlears Hook.....<br>A Lot situate as above.....<br>A Lot situate as above.....<br>A Lot situate as above .....A Lot of Land situate at Corlears Hook ..... | £ 456 ..<br>1,800 ..<br>462 ..<br>1,386 ..<br>1,536 ..<br>1,872 ..<br>546 ..<br>616 ..<br>656 ..<br>720 ..<br>640 ..<br>656 ..<br>480 ..<br>840 ..<br>304 ..<br>540 ..<br>609 ..<br><br>£ 14,119,0,0 |
| 11th.                 | Daniel Shaw .....  |   | 400 ..   |
|                       |  |   | 540 ..   |
|                       |  |   | 768 ..   |
|                       |  |   | 2064 ..  |
|                       |  |   | 2300 ..  |
|                       |  |   | 1292 ..  |
|                       |  |   | 912 ..   |
|                       |  |   | 336 ..   |
| May 30th.             |  |   |  |

## ABSTRACT—Continued.

| Date of Sales. | To whom Sold.           | Description.                                      | Price.     |
|----------------|-------------------------|---|------------|
|                |                         |   | £ s d      |
| 1786           |                         |   |            |
|                | John Sloss Hobart Esqr  | Twenty four Lots situate as above .....           | 1.008      |
|                | Peter Anspach .....     | Seven Lots situate as above .....                 | 364        |
|                | Jonathan Lawrence ..... | Twenty eight Lots situate as above, ...           | 1.288      |
|                | Ditto .....             | Fourteen Lots situate as above .....              | 448        |
|                | Joshua Keichum .....    | Seven Lots situate as above .....                 | 259        |
|                | George Fisher .....     | Ten Lots situate as above, ...                    | 250        |
|                | Ditto .....             | Thirteen Lots situate as above, ...               | 338        |
|                | Philip Jacobs .....     | Thirty two Lots situate as above, ...             | 752        |
|                | Michael Connolly .....  | Eight Lots situate as above .....                 | 288        |
|                |                         |   | £13667,0,0 |
|                | Peter Anspach .....     | Eleven Lots of Land situate in the Out Ward ..... | 374        |
|                | Isaac Governeur .....   | Sixteen Lots situate as above .....               | 736        |
|                | Ditto .....             | Sixteen Lots situate as above, ...                | 688        |
|                | Peter Anspach .....     | Twenty nine Lots situate as above, ...            | 1.189      |
|                | Garrit Van Horne .....  | Ten Lots of Land situate as above .....           | 300        |
| 1786           |                         |   |            |
| June 22nd      | Michael McLachlan ..... | Four Lots situate as above, ...                   | 280        |
|                | Ditto .....             | Four Lots situate as above, ...                   | 380        |
|                | Ditto .....             | Four Lots situate as above, ...                   | 320        |
|                | Andrew Moody .....      | Four Lots situate as above, ...                   | 400        |
|                | George Taylor .....     | Four Lots situate as above, ...                   | 364        |
|                | Ditto .....             | Four Lots situate as above, ...                   | 220        |
|                | Ditto .....             | Four Lots situate as above, ...                   | 408        |
|                | George Fisher .....     | Four Lots situate as above, ...                   | 620        |
|                | Joseph Stringham .....  | Four Lots situate as above, ...                   | 320        |
|                | George Fisher .....     | Four Lots situate as above, ...                   | 344        |
|                | James M'Cullen .....    | Four Lots situate as above, ...                   | 400        |
|                |                         |   | £7771,3,0  |
| 26             |                         |   | 328        |

|                       |   |            |
|-----------------------|---|------------|
| Henry Tenbrook.....   | Four Lots of Land situate in the Out Ward ..... | 432        |
| John Lawrence .....   | Four Lots situate as above.....                 | 304        |
| Ditto.....            | Four Lots situate as above.....                 | 296        |
| Daniel Shaw.....      | Four Lots situate as above.....                 | 304        |
| Ditto.....            | Four Lots situate as above.....                 | 332        |
| Jacob Morris.....     | Four Lots situate as above.....                 | 308        |
| James Bingham .....   | Four Lots situate as above.....                 | 356        |
| Ditto.....            | Four Lots situate as above.....                 | 336        |
| George Douglass.....  | A Lot situate as above.....                     | 345        |
| Thomas Henderson..... | Four Lots situate as above.....                 | 368        |
| Ditto.....            | Four Lots situate as above.....                 | 404        |
| Thomas Lawrence.....  | Four Lots situate as above.....                 | 472        |
| Ditto.....            | Four Lots situate as above.....                 | 416        |
| Henry Tenbrook.....   | Four Lots situate as above.....                 | 236        |
| Ephraim Brasher.....  | Four Lots situate as above.....                 | 184        |
| Henry Tenbrook.....   | Four Lots situate as above.....                 | 184        |
| Robert Lenox .....    | Four Lots situate as above.....                 | 200        |
| Ditto.....            | Four Lots situate as above.....                 | 268        |
| Abijah Hammond.....   | Four Lots of Land situate in the Out Ward.....  | £5965.0.0  |
| Ephraim Brasher.....  | Four Lots situate as above.....                 | 280        |
| Thomas Ivers .....    | Four Lots situate as above.....                 | 260        |
| Joseph Stringham..... | Four Lots situate as above.....                 | 320        |
| Abijah Hammond.....   | Four Lots situate as above.....                 | 248        |
| George Fisher .....   | Four Lots situate as above.....                 | 240        |
| Ditto.....            | Two Lots situate as above.....                  | 156        |
| James McCullen.....   | Two Lots situate as above.....                  | 158        |
| George Fisher .....   | Four Lots situate as above.....                 | 240        |
| Abijah Hammond.....   | Four Lots situate as above.....                 | 230        |
| John R. Meyer .....   | Four Lots situate as above.....                 | 304        |
| Ditto.....            | Seven Lots situate as above.....                | 490        |
| James Gray .....      | Six Lots situate as above.....                  | 300        |
|                       |   | £3546.0.0  |
|                       |   | £45008.0.0 |
|                       |   | £45008.0.0 |

## RECAPITULATION.

|  | £                | s.        | d. |
|--|------------------|-----------|----|
| (A.) Sold at auction for Bills of new emission, at specie value in gold and silver ..... | 46341            | 10        | 0  |
| (B.) Sold by Appraisement at specie value.....   | 500              | 0         | 0  |
| (C.) Sold at Auction for Public Securities mentioned in Act of May 12th, 1784.....       | 45008            | 0         | 0  |
| (D.) In Commissioners, hands, 23 Feb., 1787, unsold, at specie value.....                | 1830             | 0         | 0  |
| Total in New York pounds, shillings, and pence, £  | 93639            | 10        | 0  |
| Or in dollars.....   | <u>\$234,198</u> | <u>75</u> |    |

N.B.—This recapitulation, not in the original, is inserted for the reader's convenience. The separate items are taken from the certificate of the Commissioners, which follows.

To all to whom these Presents shall come We Isaac Stoutenburgh and Philip Van Cortlandt Commissioners of Forfeitures for the Southern District of the State of New York Do hereby Certify and make known that the foregoing Schedule contained in the several Pages within written are just and true Abstracts and Accounts of the Sales of the Estate late of James DeLancey Esquire and Forfeited by his Attainder situate in the City of New York That the Sum of Forty six thousand three hundred and forty one pounds ten shillings mentioned and Written in Page 12 is the Amount or Sum Total which was Sold for certain Money commonly called and known by the Name of the New Emission and for the Redemption whereof this said Estate was Pledged or Mortgaged by an Act of the Legislature of this State and particularly appropriated and Sold for that purpose and receiveable on the sales equal with Gold or Silver Money insomuch that the Sum of Eight Thousand and Fifty pounds was paid us the said Commissioners by certain of the Purchasers in lieu of an equal Sum due in the New Emission aforesaid without any discount or difference whatever allowed on or between the same That the Sum of Five hundred pounds mentioned and expressed in the 12th Page of said Schedule

is the Sum total or Amount of the Sales of said Estate which was Sold by Appraisement at Specie Value That the Sum of Forty five thousand and eight pounds mentioned and expressed in the 17th Page of the said within Written Schedule is the Amount or Sum total of the said Estate which was Sold for certain certificates or Public Securities mentioned and expressed in the fifth Section of an Act entitled " An Act for the Speedy Sale of the Confiscated and Forfeited Estates within this State and for other purposes therein mentioned passed the 12th of May 1784 and that the Sum of One thousand eight hundred and thirty pounds Current Lawful Money of New York in Gold or Silver Coin is the Amount of the Estate of the said James DeLancey in the Out Ward of the said City still remaining unsold in our possession and which we ourselves have estimated from a comparison of the same with the several parts by us already Sold. In Witness whereof we have hereunto Set our Hands and Seals this 23rd Day of February 1787.

ISAAC STOUTENBURGH [seal]

PH. V. CORTLANDT [seal]

Signed Sealed and Delivered in  
the presence of us

JA<sup>s</sup> DUANE Mayor

J. WATTS Jun<sup>r</sup>

City of }ss :  
New York }

Be It Known that on the within mentioned twenty third day of February in the said year of our Lord one thousand seven hundred & Eighty Seven personally appeared before me James Duane Esq<sup>r</sup> Mayor of the said City of New York, the within named Isaac Stouterbergh and Philip Van Courtlandt being the Sole Commissioners of Forfeiture for the Southern District of the State of New York, appointed & duly Qualifyed in Pursuance of an Act of the Legislature of the said State for that purpose made & provided, and did in my Presence Severally Sign Seal and acknowledge the within written Certificate (particularly relating to the Sales of the

Estate forfeited by the Attainder of the within named James De Lancey in this district) as the voluntary Act & Deed of the said Commissioners & Each of them.

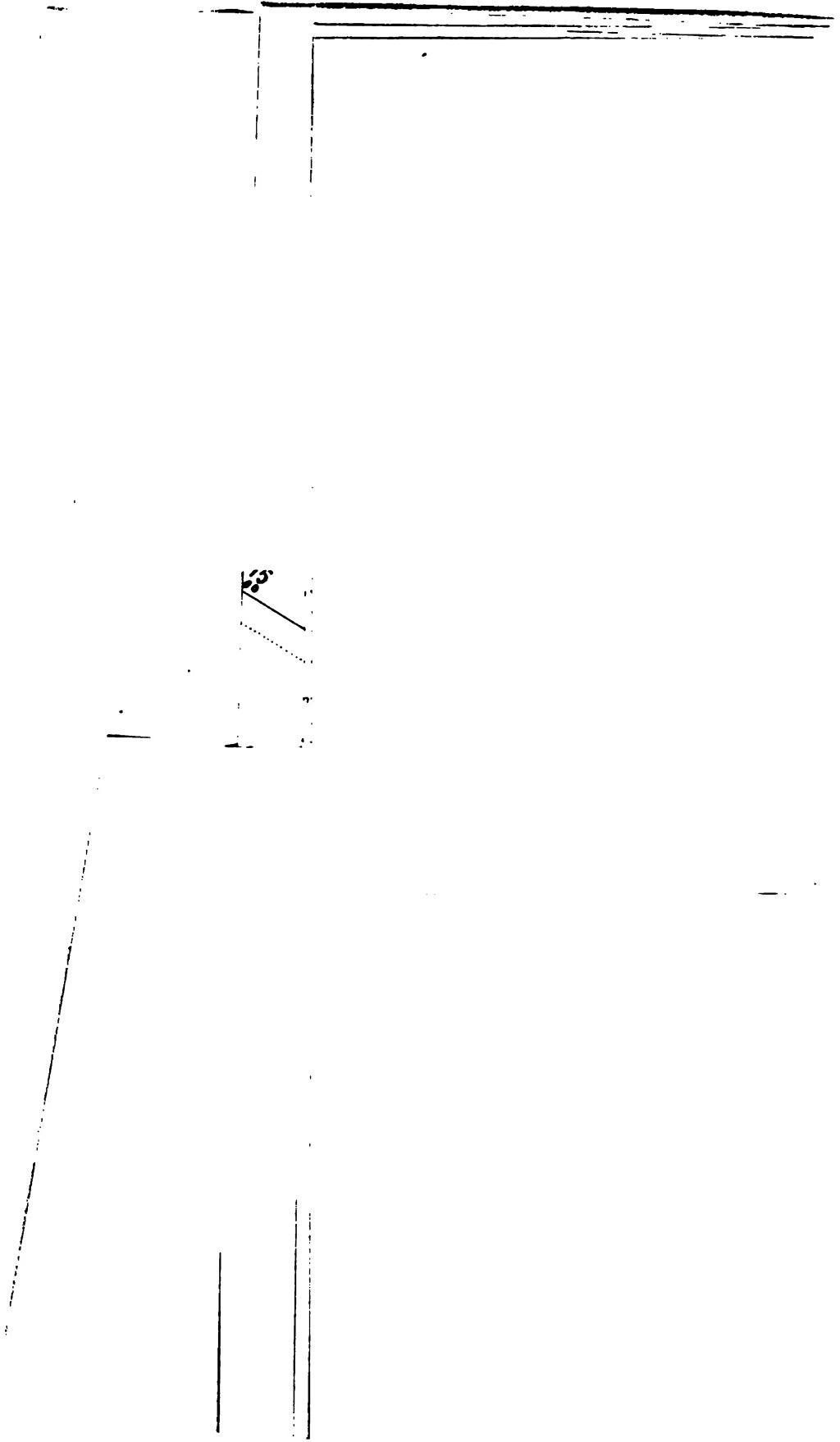
In Faith and Testimony whereof I the said Mayor have hereunto Subscribed my Name and [Seal] caused the Seal of my Office of Mayoralty to be hereunto affixed the day and year first above written.

JA<sup>o</sup> DUANE.

By order of the Mayor  
ROB<sup>r</sup> BENSON Clk."

The kind of money paid for the lands in Lists "A" and "B" was gold and silver, or " Bills of the New Emission," at their value in gold and silver. The latter were 487,500 dollars—the proportion assigned to New York for emission and redemption—of the Bills of Credit emitted pursuant to an Act of Congress of the 18th of March, 1780, relative to the finances of the United States. And for the payment of which proportion in gold and silver, New York, by an Act of the 15th of the following June, enacted that the estates of Sir John Johnson, on the north of the Mohawk ; John Butler, in Tryon County ; Philip Skeene and Andrew P. Skeene, his son, in Charlotte County ; Frederick Phillipse and his son Frederick Phillipse, Jr., in Westchester ; and of William Bayard, James De Lancey, and Oliver De Lancey, in the City of New York, " shall be and are hereby mortgaged and bound."<sup>1</sup> About three weeks after the reception of the news of the signing of the treaty of peace of 1783, and on the 6th of April, 1784, the New York Legislature passed "*An Act for the immediate sale of certain forfeited Estates,*" but excepting those mortgaged ; and on the 12th of the succeeding May the "*Act for the speedy sale of the Confiscated and Forfeited Estates*" under which the sales of James De Lancey's estate was made. List B was paid for either in gold and silver, or in sixteen different kinds of paper evidences of debt of New York,

<sup>1</sup> Chap. LXIV. of the Laws of the Third Session of the Legislature of New York, Sect. VI.





except one (which was the United States Continental money), at their specie value, at certain rates of depreciation mentioned in the act. Among them even were " Bills of the late Colony of New York," issued under the royal government, which were taken at the rate of £120 for £1 gold. Other discount rates of these " public securities " were as follows : The Bills of the Provincial Convention and Congress of New York, at \$120 for \$1 in silver ; Continental money, \$120 for \$1 in silver ; Treasurer's Certificates, under act of 24th June, 1780, of \$40 for \$1 in silver ; and Receipt Warrants, under act of 1st July, 1780, " at the rate of one dollar in silver for every bushel of wheat specified in said warrants." Nine of them were different kinds of Auditor's and Commissioner's " certificates," two of them specified as " given, or to be given," which were to be taken, " reduced to their value in specie by the Continental scale of depreciation."<sup>1</sup>

In these extraordinary " securities," of which speculators took great advantage, were the payments for the lands in List B made.

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#### NOTE XLI.

##### THE CONTENDING PARTIES IN NEW YORK PRIOR TO THE REVOLUTION.

*Vol. II., p. 291, note.*

THE author's note at page 291 on the contending parties in New York before the Revolution, and their bearing upon the questions in dispute with the British Government, is striking. Compare with it the following statement on the same subject, which occurs in a " Description of the North American Colonies ; respecting Situation, Extent, Climate, Trade, Population, and Strength," published, with a map, in the *Political Magazine* for April, 1780. The account of the Province of

<sup>1</sup> Section V. of the Act of 12 May, 1784.

New York says, "New York the capital contains about 20,000 inhabitants; before the present war the streets were kept perfectly clean, now they are intolerably dirty, every body complains, but no attempt is made to remedy it. The inhabitants are mostly the offspring of the first Dutch settlers. For a long time two factions have existed in this Province, the DeLanceys and the Livingstones; on the breaking out of the present disturbances the Livingstones waited to see what side the DeLanceys would take, and when that family attached themselves to government the Livingstones instantly joined the other party. The inhabitants of this province are estimated at 200,000."

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#### NOTE XLII.

**THE FIRST TWO ARRESTS OF JUDGE JONES FOR HIS SENTIMENTS—HIS PAROLES—THE CAPTURES OF JUDGE JONES AND GENERAL SILLIMÁN—ACTION OF THE CONNECTICUT AUTHORITIES AS TO THE FORMER—CONTEMPORARY ACCOUNTS—MRS. SILLIMAN'S MS. ACCOUNT OF BOTH CAPTURES AND THE FINAL EXCHANGE OF THE JUDGE AND THE GENERAL—SKETCH OF THE LATTER.**

*Vol. II., p. 295.*

THE Continental Congress on the 6th of October, 1775, by resolution, "recommended to the several provincial Assemblies or Conventions, and Councils, or Committees of Safety, to arrest and secure every person in their respective colonies whose going at large may, in their opinion, endanger the safety of the Colonies or the liberties of America."<sup>1</sup> But not till eight months afterward—on June 5th, 1776—did the New York Provincial Congress dare to take such action. Then, the American Army having arrived from Boston and being encamped on New York Island, they felt secure enough to

<sup>1</sup> *Journals of Congress for 1775, p. 213.*

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undertake this violation of the law of the land and of the liberty of the subject, and passed very long resolutions directing the summary arrest of about one hundred of the most prominent residents of Long Island, New York, and Westchester, *by name*. Among them were William Bayard, John Moore, Goldsbrow Banyar, Judge Thomas Jones, Gerard Walton, Oliver de Lancey, Peter Von Schaack, Robert Bayard, Samuel Hallett, John Watts, Jr., and others equally well known.<sup>1</sup> The summons of Judge Jones, and his parole, given in the text, shows this action and its result in his case. The whole occurred *before* the Declaration of Independence.

On the 24th of June, at the instance of the Committee,<sup>2</sup> the Provincial Congress by resolution requested Washington "to order the disarming and securing disaffected persons on Nassau Island."<sup>3</sup>

Thereupon, after some delay, during which Independence was declared, he issued an order directing the arrest of such persons, their arraignment before a Military Court, and their removal to a distance out of the bounds of New York. When they pleaded their paroles he wrote a remarkable letter dated the 12th of August, 1776, to the Convention, asking that body to remove what he calls "their pretence;" which was done the same day, in these words: "*Resolved unanimously*, That the several parols be and they hereby are declared totally void, as to any obligations thereby laid upon those who have been, since the giving of the said parol, made prisoners as aforesaid," and a certified copy was sent to Washington.<sup>4</sup> In his letter above referred to,<sup>5</sup> Washington says he "postponed this most disagreeable duty to the last moment." He thought it justified by the necessities of the army, then expecting an attack by Howe's forces from Staten Island.

Judge Jones, arrested on the 11th of August, 1776, was arraigned before the Military Court, and pleaded his parole of

<sup>1</sup> Journals Prov. Con., Vol. I., pp. 476-478.

<sup>2</sup> See their names signed to the summons of Judge Jones in the text, p. 296.

<sup>3</sup> Journals Prov. Con., Vol. I., p. 504.

<sup>4</sup> Ibid., p. 570.

<sup>5</sup> Ibid., p. 569.

June 30th (given in the text, page 296) ; on the 12th, Washington wrote his letter to the N. Y. Convention asking for the abrogation of the paroles, and the Convention abrogated them, on the same day, August 12th, 1776. Adjutant-General Joseph Reed's official " Instructions " to Capt. Eells to take the Judge and sixteen others to New London or Norwich, is dated the same day, the 12th. The prisoners sent were, " Judge Jones, Daniel Kissam, jr., Augustus Van Horne, William Thorne, David Brooks, Archibald Hamilton, John Willett, John Rapalye, Adam Seabury, Charles Nicoll, Joseph Griswold, John Chave, David Beatty, Benj. Hewlett, Whitehead Cornell, Charles Hicks, Isaac Smith." Their parole, not given in the text, was as follows :

" We the subscribers, being sent from New York to Connecticut under guard of a party commanded by Captain Eells, as being persons supposed not to be friendly to the United States of America, with orders not to be confined in jail, if we give our parole not to escape until further directions from Governor Trumbull, as per order signed per *J. Reed*, Adjutant General. We do therefore upon the honor credit and faith of gentlemen, each of us, severally promise, for himself, to the Governor and Company of the State of Connecticut, faithfully to abide in Norwich, in Connecticut, and within the limits of the parishes called the *First Society* and the *Society of Chelsea*, in Norwich aforesaid, until further orders can be had respecting us and our location from Governor *Trumbull* and his Council of Safety ; and that in the meantime, we, each of us will refrain from all correspondence with any persons unfriendly to these States, and abide such orders and directions as shall be given respecting us, or any of us, by the Committee of Inspection in *Norwich*, until orders shall be given by the Governor and Council aforesaid. Dated at *Norwich* the 11th day <sup>1</sup> of *August*, 1776." Signed by all the persons above named.

The Connecticut authorities in December, 1776, alarmed by the British successes in the campaign of that year, released the prisoners sent them by Washington in the previous August, as stated in volume first, page 154. The releases were

<sup>1</sup> This is the date given in the document in Force's Am. Archives, Fifth Series, Vol. III., p. 989 ; but it is a misprint for the 21st, as the " Instructions " (above given) on p. 990 of the same volume are dated the 12th, and the Judge himself, in the text, p. 297, says he did not arrive till the 19th, and that this parole was not given to the Norwich Committee till the 21st.

made at different times during that month. The first action of the Council of Safety of Connecticut was as follows, and it gives the parole on which Judge Jones was *released*, and which was in operation when he was seized and taken prisoner for the third time, in November, 1779, in retaliation for the capture of Gen. Silliman.

"At a meeting of the Governor and Council of Safety, December 7th, 1776:—

"Present His Honour the Governor (Jonathan Trumbull), *Eliphelet Dyer, Jabez Huntington, William Williams, Nathaniel Wales, jr., Benjamin Huntington, William Hillhouse*, Esquires.

"On receiving intelligence that the *British Fleet* have sailed from off New London Harbour eastward, his Honour the Governor gave orders to stop the several regiments ordered for the defence of New London, but to hold themselves in readiness to march to any place that may be attacked, &c.

"*Voted*, To suffer the Prisoners sent from General Washington when at *New York* under a guard commanded by Capt. Eels, to return to Long Island, they giving their parol not to give any intelligence to the enemy of what is done, or doing, here, nor to take up arms, or say or do anything against the American States; and that they will return back to this State at any time when demanded:

"*Resolved by this Board*, That the gentlemen sent to this State by General Washington belonging to Long Island, and placed at Norwich, and now residing there, be permitted, and have liberty, to return to their several homes, for the present, upon their and each of them giving their parole as follows, viz :

"We do hereby severally and respectively promise and engage to the Governor of the State of *Connecticut*, on the faith and honour of gentlemen, that we will neither of us give notice or intelligence to the enemy of the *United States of America*, nor hold any inimical correspondence with them; that we will not take up nor bear arms against the *United States of America* nor act an offensive part against them or either of them, but to conduct peaceably and quietly with respect to the present contest and troubles, and return back to this State when required by the Governor."

"And the Committee of Inspection of the town of Norwich are hereby authorized to take their parole made and signed, and give a copy thereof, and a permit to them to return."<sup>1</sup>

A copy of this parole, signed by Judge Jones and fourteen others of the prisoners, dated 9th December, 1776, is the one the author refers to, in general terms, on page 299, and under

<sup>1</sup> Force's Am. Archives, Fifth Series, Vol. III., pp. 1112-13.

which he resided quietly at his seat at Fort Neck, in Queens County, until his seizure for Gen. Silliman on the night of the 6th day of November, 1779—a period of very nearly three years.<sup>1</sup>

This seizure was the result of a deliberate plan to obtain a Loyalist of high position and standing, to be delivered as an exchange for General Silliman, who had been captured about six months previously by a party of Connecticut men who had been driven to take refuge at Oyster Bay, Long Island, by the severe measures adopted against them by their fellow-countrymen on the American side. General Silliman himself, who had command of the forces guarding the coast of Connecticut, states this fact in a letter, dated "New York, May 12th, 1779," to his father-in-law, the Rev. Joseph Fish, of Stonington: "Before this reaches you, you will have received the news of my captivity, I doubt not. I was surprised in bed at my own house about 1 o'clock in the morning of the Sabbath, the 2d inst. by a party of refugees from Connecticut (except two that were foreigners) commanded by one Bonnell, who used to live in my neighbourhood. This party went from the Island for this purpose. Billy (his son, Major William Silliman) is with me. We both receive kind and complaisant treatment."<sup>2</sup>

The particulars of the capture were given in *Rivington's Gazette* of the 5th of May, 1779: "A few days ago a party of the Kings Militia volunteers, made a descent at Black Rock Harbour, opposite the town of Fairfield in Connecticut about one o'clock in the morning. They advanced to the house of Brigadier Silliman, where they seized upon that General (who is held in high estimation in the Colony) and at three o'clock the next day safely landed Mr. Silliman with his son a Major of Brigade, at Oyster Bay. The Country was thrown into great consternation from this successful enterprize, projected and commanded by Captain Bonnell, whose party consisted of Capt. Glover, Capt. Sillitt, Lieut. Hubbell, Mr.

<sup>1</sup> Force's Am. Archives, Fifth Series, Vol. III., p. 1143, where this parole is given in full, with all the signatures.

<sup>2</sup> MS. letter.

Ebenezer Lewis, Mr. Jabez Benedict, Mr. Joel M'Reay, Mr. Patrick Moore, and Mr. Alexander Graham.<sup>1</sup> The Brigadier-General's father had, in his day, approved himself a warm friend of the Hon. Mr. George Grenville's administration, and exerted every possible means to secure a perfect operation of the Stamp Act in America." Eight days after his capture, the General, in a letter to his wife dated New York, May 10th, 1779, says: "This, with Billy, I hope you will receive together, before the week ends. This favor I owe to Mr. Loring's genteel, humane, behaviour towards us both.<sup>2</sup> Billy's want of health, and need of a tender mother's constant attention has induced Mr. Loring to think it necessary for him to be allowed to come home on parole. This Mr. Loring has been so kind as to call and acquaint me with a few minutes ago, but for how long time he will be permitted to stay I cant say."<sup>3</sup>

The author's account of his own capture in the following November is given on page 276 of this volume, and is incidentally referred to in other places in this work. The following MS. account of both captures, and the final exchange of the Judge and the General, written in 1801, twenty-two years after the occurrences, by Mrs. Gold Selleck Silliman, the widow of the latter, is now first printed by the kind permission of her granddaughter, who is also the granddaughter of Governor Jonathan Trumbull, Mrs. Oliver P. Hubbard, of New York, the present possessor of the manuscript, who not only placed it at the editor's disposal, but very kindly had the "copy" used in printing, made by one of the members of her own family.

"In the year 1779, he was appointed & stationed by the Captain General or Governor of the State, to guard the Coast in the vicinity of Fairfield, & to take charge of all the outposts in that county, & his own house was allowed to be his head-quarters.—This house stood on Holland Hill—an eminence (about two miles north from Fairfield village)—which commands a view of the sound of Long

<sup>1</sup> Moore and Graham were probably the two "foreigners" referred to in the above letter of the General.

<sup>2</sup> Joshua Loring, the famous British Commissary of Prisoners.

<sup>3</sup> MS. Letter.

Island for forty miles—a position peculiarly favorable with a good telescope for discovering the movement of the cruisers & other vessels of the enemy.—In this situation he continued until the first of May, when General Clinton the British Commander of New York sent a whale boat manned by tories to surprise & take him prisoner. Between midnight & one o'clock in the morning (Sabbath) when we were all asleep the house was attacked. I was first awaked by my husband's calling out, "Who's there?" & at that instant, there was a banging at both doors,—they intending to break them down, or burst them open, & this was done with great stones as large almost as they could lift. They left them at the doors. My husband then sprang up, caught his gun (two guns always stood loaded at the head of his bed) and ran to the front of the house, & as the moon shone he saw the men through the window, (the piazza being filled with them) he then thrust a gun through a pane of glass & attempted to fire—but the powder only flashed in the pan & missed fire—At that instant the enemy burst in a window sash & all, & jumped in, seized on him, said he was their prisoner, & he must go with them. These ruffians said that it was fortunate for him that his gun missed fire, for had he killed a man they would have burned the house & murdered all who were in it. He asked "if he might not dress himself." They said, "Yes, if he would be quick."

All this time I lay quaking & they followed him into the bedroom. They bore guns with bayonets fixed, & their appearance was dreadful. It was then that their prisoner addressed them in mild terms, & begged them to leave the bedroom—& told them that they would frighten his wife.

They then withdrew for a few minutes but soon returned, when he asked them out again; they hurrying him he went out & shut the door. After that I heard them breaking the windows which they wantonly did with the breech of their guns. They then asked him for his money; he told them he had none but some continental bills which would do them no good. They next asked for his papers when he replied, that his public papers were all sent abroad & his private ones would be of no service to them. Then some of them wanted spoils & began to take one thing & another.

He then told them mildly, that he hoped he was in the hands of gentlemen (as soldiers were generally gentlemen & as they had secured him) it was beneath them to plunder. With these arguments he quieted them so that they plundered very little. The silver of the communion service was in an open basket in the bedroom (he being Deacon)—which he concealed with my gown, so it was not discovered.

They then told him "he must go." He asked "if he might go & take leave of his wife." They said "Yes, if he would make haste." He then came in & dropped a bundle of his most valuable private papers under something on the table. He took leave of me with great seeming fortitude & composure, & went away with them. As

soon as I heard the door shut, I rose & went to the bedroom of our son William Silliman, & found that he was gone, although I did not hear any thing of their taking him. I then sent my negro servant, Peter, to the next house (that of Deodati Silliman, my husbands youngest brother, & the mansion of his father the late Judge Ebenezer Silliman)—They fired a gun, & soon several guns were fired which frightened the enemy very much. I could see them in their retreat for a quarter of a mile from our house, & they had to go about two miles to the whale boat, which they had left, with a man to watch it, at the head of Black Rock harbor between Fairfield & Bridgeport. Their alarm was so great that they endeavored to make their prisoners run, & pulled them along by their arms, especially William who had been sick with Ague & Fever. They then proceeded for Long Island & I heard nothing of them for three weeks.

After this period of great anxiety, I received a letter from my husband at Flatbush L. I. in which he informed me, where to send my letters, directed to him, for inspection, as no letters were suffered to pass without. After this we corresponded, but wrote under such restraint that it did not seem to be the thing.

But to return & be a little more particular about matters that related to the capture of my husband & son. There were nine that came over in the whale boat,—one remained with the boat & eight came to our house, & with their captives embarked between the hours of one & two o'clock in the morning. They had a boisterous time over but that did not prevent some of the crew from feasting their eyes on some matters they had plundered from the house,—especially a beautiful purse, & a pair of pistols inlaid with silver all over, a present from Mr. Mills an English gentleman, collector of New Haven port ;—also an elegant sword which one of them who had worked at our house took much pleasure in flourishing about, & he it was who piloted them to our house. His name was Glover, a carpenter, & had been employed to build a cider mill on the farm, & being therefore well acquainted with the premises was well qualified to be guide. When they arrived at Brooklyn L. I. they were hailed by a Col. Simcoe, a leading tory, who commanded there, "Have you got him?" "Yes." "Have you lost any men?" "No." "That's well" says Simcoe, "Your *Sillimans* & your *Washingtons* are not worth a man."

He then ordered his men to the Guard house with the prisoners. On this the General said "Am I going to the guard house?" "Yes" was the reply. When they came there he said to the Adjutant, "Is it thus you treat prisoners of war of my rank—that of Brigadier General?" He said "We don't look on you as we should on a continental General—but as a militia General." "But how will you view me when my exchange is talked of?" "I understand you, Sir," was the reply, when he went out & I suppose reported to his Commanding Officer.

Soon after the Prisoners had an invitation to break fast at a neigh-

boring house, to which they went & refreshed themselves, & then a carriage & horse was sent for them to ride to New York, escorted by a guard of dragoons. When their arrival in the City was known, there was a great flocking to see a Rebel General, but by & by a gentleman came & whispered him to go with him, for fear he would be insulted by the rabble. He conducted him to good lodgings where he remained with his son till he was ordered to Flatbush on Long Island, where he remained until he was exchanged for Judge Jones.

The circumstances of his capture were somewhat singular & very interesting to us. By all my investigation & that of my friends we could not find any officer in the possession of the Americans, whom the British would accept of for the General—I wrote to Gov. Trumbull for assistance and direction in the matter—(V. letter to Gov. T. May 23 1779—) He too felt himself much interested, not only from his personal friendship for him now a prisoner of war, but for the people, as he said he had not a more faithful officer than he,—but he knew of none whom the enemy would accept for him.

At length it was thought best to attempt a capture for that purpose, & Judge Jones on Long Island was thought a proper person, as he was a great tory & the Chief Justice of their Superior Court.<sup>1</sup>

Captain David Hawley of Newfield, (Bridgeport) kindly offered (I think the movement was voluntary) to undertake the enterprize. He soon manned a whale boat of which he took command, & embarked, & set sail for Long Island. When they reached the shore, they had above fifty miles to travel before arriving at the seat of the Judge, which was at Fort Neck.

They were now in an enemy's land & they must not be seen travelling,—so they drew their boat up & tied it in the woods & they lay concealed all the day, & travelled in the night—When they came to the house they were struck with its appearance, for the Captain said it looked like a castle. I forget how long they were in going but it was Saturday night about 9 o'clock when they came to the house where they heard music & dancing.

Capt. Hawley rapped at the door, but no one heard. He then burst in a panel & jumped in & laid hold of the Judge, whom he found in the entry, & told him he was his prisoner, & as Providence ordered it there was there a young gentleman on a visit whose name was Willet<sup>2</sup>—him too they took & he served for an exchange for William.

They soon hurried them out of the house & they had to pass nigh a guard.—When they came there the Judge “hemmed” very loud. Capt. Hawley who had him by the hand told him he must not do so, but he repeated his “hem,” when Capt. H. told him if he “hemmed” again he would run him through. He afterwards desisted & they went on through the night. When morning came, they conducted

<sup>1</sup> Mrs. Silliman erred in this, he was a *Justice of the Supreme Court of New York.*

<sup>2</sup> A nephew or cousin of Judge Jones, whose mother was a Willet.

the Judge to such lodgings as they had, which were among the bushes, until the next night when they went on, & reached the whale boat, I think the third night, & glad were they to find it, for had it been taken in their absence, they would have been in a woful plight. They then went aboard & proceeded unmolested until they arrived at Newfield.

News came to me in the morning that Capt. Hawley had arrived with Judge Jones. Although I was glad the event had taken place yet my heart was full of sympathy for him & his family, whom I knew well how to pity as I had myself so recently gone through the same trial. Wishing to make his captivity as easy as possible, I sent my son to invite him to our house to breakfast, & he came under a guard. After being mutually introduced, "I observed to him that the fortune of war had brought him here under disagreeable circumstances, & as I could so well sympathize with him and his family, I wished to do everything in my power for his accommodation until the purpose of his capture was effected, when I hoped that Mrs. Jones & myself & our partners would be made happy in seeing each other again." But to my disappointment I found him insensible & void of complaisance, & sullen discontentment sat on his brow. He made no reply but asked this question "Did they plunder when they took your husband?" I said "Not much." He said "They have plundered my house—I don't believe they have left my wife a second sheet." This I was sorry to hear, & afterwards enquiring of Capt. Hawley, he told me that he had held up the idea, that there should be no plundering—but when they had landed on the other side, the men said "What are we to get by it, if we do take Judge Jones? We run a great risk, and we do not know but we may be killed. Unless you give us leave to plunder we will go no farther." He then saw that the expedition would be frustrated & he was obliged to tell them they might plunder.

But to return, I got as good a dinner for my captured guest as I could, & my family paid him every attention, but he was very unsociable all the while he stayed, which was only two or three days, when he was ordered I think by the Captain General to Middletown thinking our house an unsafe place. Mr. Willet who was taken with him was paroled by Capt. Hawley & did not come when the Judge did, but came on afterwards, was exchanged for William & went home.

After that I received a very genteel billet dated Fort Neck April 23<sup>d</sup>, 1780, from Mrs. Jones expressing her great thankfulness for (to use her own words) my politeness to her dear Mr. Jones, and begged me to accept a pound green tea.<sup>1</sup>

<sup>1</sup> Mrs. Jones's note to General Silliman at Flatbush:

"Mrs. Jones's respectfull compliments to General Silliman. Begs he will return her most grateful thanks to Mrs. Silliman for her polite Note which she had lately the pleasure to receive. Mrs. Jones is the more obliged to Mrs. Silliman for her attention in mentioning Mr. Jones as it is the only Intelligence she

The capture of Judge Jones was effected for the purpose of bringing about an exchange for my husband, but it was a long time before it could be accomplished, for the British stood out, & they consented to it at last, only upon the condition that they might have one Washburn, a tory, & a man of notoriously bad character, whom we had taken during the war ; this they said might "make weight."

This was finally agreed on, & Judge Jones was sent for from Middletown, & a vessel was hired by us to take him in, & the same was appointed to bring the General back, if they would let him come, & we agreed that if they obtained him, two flags should be hoisted when they returned, that we might know for certain that he was coming. The vessel sailed about 8 oC. in the morning of April 27, 1780, from our harbor. They had a fine wind & I saw them go with great rapidity. We hoped that in two or three days we should receive him who had been so long separated from us. But about one OC P.M., April 28<sup>th</sup>, we saw the same vessel returning & to our surprise we saw two flags. This we could not understand, as we knew they had not had time to go to New York while they had been gone. The fact was that the same day we were sending the Judge off, they at New York were sending off the General, & the vessels met. Their flag of truce hailed ours & asked "If they had Judge Jones on board ?" "Yes." "Well, we have General Silliman too" was their answer & they soon boarded each other. And as I had sent a fine fat turkey for the General's comfort on his voyage home, they hastened to dress it, that the Judge might dine with him before he went on, which he did, & after taking leave each vessel went on its way.

Dr. David Rogers of Greenfield was deputed by Governor Trumbull to finish the arrangements for the exchange. When he arrived at Kings Bridge, at the North end of York Island, (the entire island being included within the British Camp) he was blind folded, & his horse was led 12 to 14 miles to New York, that he might not see the military arrangements. When arrived in the city his bandage was removed & he was conducted into the presence of Gen<sup>l</sup>. Knyphausen Commander of the Hessians, & at that time Commander of New

has received of him in two months—Mrs. Jones takes the liberty to request General Silliman will exert the Great Influence he has with his Excellency Governor Trumbull to forward the Exchange with all possible dispatch which she makes no doubt his humanity would induce him to do was his own interest out of the question.

FORT NECK April 23d 1780.

*(The rest of the sheet is torn off.)*

Professor Benjamin Silliman writes on this sheet :

"I know not who has torn off a part of this paper which contained the mention of a present of a pound of Green Tea—in a separate memorandum—as a delicate lady would perform an act of respectful kindness in an incidental way not appearing to make much of it."

York, by whom he was courteously received, & the articles of exchange were soon settled.

When our vessel came within call of our fort & battery on Grover's Hill, near Black Rock, one called to know if they had Gen<sup>l</sup>. Silliman on board. He then leaped on deck & waved his hat, when there was so loud a shout that we heard them plainly at our house at the distance of two miles, & then all the cannon were fired off & the same took place when he landed at the wharf.

This was very pleasing to us all to see so many testimonials of joy at his return for they appeared to regard him as a public Protector. Many of the people waited upon him up to his own house.

After this period May 1780 a subalterns guard, by order of the Governor, was at our house every night for a long time & we had frequent alarms.

Mr. Silliman after this was not in active service in any campaign, but he had as before the care, under Governor Trumbull of all the coast in Fairfield County & of course of all the inland frontier as Connecticut was bounded on the S. W. by West Chester county, in which as well as in New York, & Long Island the British held sway, & they, & their friends the Tories, demanded unceasing vigilance to avert or repel their incursions.<sup>1</sup>

Col. Simcoe commanded at North Oyster Bay, not Brooklyn, as Mrs. Silliman says (p. 567). In his "Military Journal" he merely says that this capture of Silliman was authorized from Headquarters in New York.

For the following sketch of his father, by the late Professor Benjamin Silliman, the writer of these notes is indebted to the courtesy of the present Professor Silliman and the kindness of his friend, the Hon. Benjamin D. Silliman, of Brooklyn.

"General Gold Selleck Silliman was the eldest of five sons of Judge Ebenezer Silliman, of Holland Hill, two miles from Fairfield, Conn. Judge Silliman was in the highest class of public men in his day, in the service of the Colony of Connecticut. He graduated at Yale College in 1727, (the same year that Gov. Trumbull graduated at Harvard) and they were during a long course of years cotemporaries and coadjutors. Gold Selleck Silliman (bearing the family name of his mother Abigail *Selleck* and his grandmother, her mother, Abigail *Gold*) was born May 7th, 1732, graduated at Yale College in 1752. He was elected a tutor, but declined the position.

"General Silliman was twice married. First to Martha Davenport,

<sup>1</sup> The note in Dwight's Travels, Vol. III. of the London Edition of 1823, page 488, upon which all the usual accounts of this Silliman-Jones case are based, incorrect in itself, by omission and commission, and though not credited to it, is evidently based upon this statement of Mrs. Silliman.

January 22d, 1755, (great granddaughter of Rev. John Davenport, the London minister who led the New Haven Colony with Gov. Eaton in 1638). His second marriage was to Widow Mary Noyes, née Fish, at Stonington, Conn., May 24th, 1775. From this marriage came the two brothers, Benjamin Silliman and Gold S. Silliman, of Brooklyn, N. Y., both graduates at Yale in 1796. General Silliman is reported in the letters of his contemporaries as a person of great influence in his locality; as a man, a lawyer, a magistrate, a military commander, a Christian, and a friend; of a decidedly fine personal appearance, hazel eyes, commanding forehead, and great dignity of manner, a courteous cavalier, firm but suave in the discharge of duty. He was Colonel of cavalry when the Revolution began, was in commission from the State of Connecticut under Gov. Trumbull during the whole of the struggle for freedom, and had charge of the entire south-eastern portion of the State.

"From General Silliman's house on Holland Hill, two miles from the Sound, on an eminence back of Fairfield, he could watch with his glass the movements of the ships of the enemy, and had a range of forty miles, seeing, in fine weather, the movements on Long Island. Gov. Trumbull made this house headquarters, and there the subordinate officers received their orders and made their reports."<sup>1</sup>

As a Colonel of Connecticut troops, General Silliman served under Washington on New York Island, and in Westchester, in 1776, and returned to Connecticut with his regiment when their time was out, late in the autumn of that year. Subsequently he was made Brigadier-General by Gov. Trumbull, and placed in command of the coast between the Connecticut River and the New York line, and served there throughout the war, except while a prisoner. He was never in the Continental army, and hence there is little mention made of him by historians.

<sup>1</sup> MS. of his son, the late Professor Benjamin Silliman, of Yale College.

## NOTE XLIII.

PETER VAN SCHAACK.—HIS LEAVING NEW YORK.—HIS DEPARTURE FOR AND RETURN FROM ENGLAND.

*Vol. II., p. 306.*

THE reference to Peter Van Schaack as one of those who remained in New York after its abandonment in 1776 by the American army, although he had been a member of the City Committees in 1774-75, aided in drawing the New York "Association" and taken an active part, is erroneous. He had previously, in the summer or autumn of 1775, removed with his family to his native village of Kinderhook, and quietly stayed there on his ancestral estate, which was never confiscated, nor was he ever attainted, as the text correctly states. He sailed for England on the 16th of October, 1778, after having been formally banished in the preceding August, for his loyalist principles, under the iniquitous Act of 30th June, 1778, known as "The Banishing Act." By the terms of this Act every person who refused to swear that he believed New York was "of right," a free and independent State, was to be forcibly removed "within the enemies lines," his name "recorded in the Secretary's office," and his lands after the 26th of June, 1778, "forever charged with double taxes."<sup>1</sup> He remained in England till 1785, when, after a previous correspondence with John Jay, and Governor George Clinton, his old personal friends, who each wrote him that they thought he might return with safety, he came back to New York, arriving on the 20th of July, 1785. He died at Kinderhook, the 27th of September, 1832, aged eighty-five years. For the facts of Mr. Van Schaack's long and honored legal career, and for much valuable light on New York affairs, and New York men, during the Revolution, the reader is referred to the "Life of

<sup>1</sup> Chap. XLVII. of Laws of 1778.

Peter Van Schaack" by his son Henry Cruger Van Schaack, published by the Appletons in 1842, and especially to the contemporary documents, letters, and papers therein contained.

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#### NOTE XLIV.

##### THE BURNING OF CITIES, TOWNS, AND HOUSES, AND OTHER ACTS OF WAR, DURING THE REVOLUTION.—THE CASE OF THE ACADIANS.

*Vol. II., 307-314.*

WRITERS on both sides have indulged in much crimination and recrimination for acts done by the armies and partisans of each side during the American Revolution. War is war, and a civil war, like that of the Revolution, is the worst of wars, as the United States have discovered by the late Southern Rebellion. There was really no difference in the Revolution. Each side injured the other as far and as much as possible. The code of war permits acts, which the Americans have denounced as British barbarities, and the British as Rebel atrocities. Harrowing descriptions and documents were issued by both sides, to rouse sympathy, to stimulate exertions, or to be revenged. And many wholly false and fictitious statements, like Benjamin Franklin's famous account of the bushels of scalps, gotten up for such purposes, have found their way into historical writings, and been gravely stated as matters of fact. Human nature was the same during the American war as it is now; and it should be remembered that in these matters, the "loyalists" and the "rebels" of 1861-65, acted precisely as did the "loyalists" and the "rebels" of 1776-83. To attempt to strike a balance in either instance on either side is futile.

The case of the Acadians in this connection is referred to by the author at length, and every reader will recall at once

the beautiful poem in which the most refined, and most cultivated, of American poets, has forever enshrined the woes of Grand-Pré and the fate of Evangeline. Yet it is perfectly clear since the publication by the Government of Nova Scotia of all the official documents on both sides relating to the French of Acadia, that that Government was compelled by the course of Lé Loutre, the Vicar-General of Acadia, and the other leaders of those unhappy people, to adopt the course of action it did.<sup>1</sup> It was the *method* of enforcing that action, not the action itself, which was objectionable. The "native of New England" who summoned the poor Acadians to the church of Grand-Pré, and there made them prisoners, on the 5th of September, 1755, and transported them, was Lieutenant Colonel John Winslow, the senior officer of the 2,000 Massachusetts troops by whom the cruel removal was enforced, son of Isaac Winslow of Marshfield, Massachusetts, grandson of Josias, the second Governor Winslow, and great-grandson of Edward, the first Governor Winslow of Plymouth Colony, who came over in the Mayflower.<sup>2</sup> And the Major Fry who burnt the other villages, was also a New Englander. The Acadian exiles were not sent from Halifax only, as might be inferred from the language of the text, but also from the Bay of Minas, the peninsula of Chignecto, and Annapolis Royal. By the treaty of Utrecht in 1713, Nova Scotia was ceded by France to England and its inhabitants allowed to remove with-

<sup>1</sup> See "Papers relating to the Acadian French, 1714-1755," and "Papers relating to the Forcible Removal of the Acadian French from Nova Scotia" in the volume entitled "Archives of Nova Scotia," Halifax, 1869. Also Murdoch's "History of Nova Scotia," Vol. 2, pp. 280, &c.

<sup>2</sup> Lieut.-Colonel Winslow refused to accept his commission from Gov. Shirley for this command unless he was paid £600 sterling over and above his pay, as "a present," which he proposed "should be raised out of the fund for bounty money. Supposing 35 or 36 shillings be allowed instead of 30 shillings per man, which is agreed between us and Mr. Winslow hath accepted it" (*Letter of Gov. Shirley to Gov. Lawrence, Nova Scotia Archives*, p. 99); and from a letter of Lawrence to Moncton, of 28th of March, 1755, it seems he wanted £700. Mass. Hist. Coll., Vol. IX., p. 220. He died at Marshfield, in 1774, aged 71, leaving two sons, Pelham and Isaac, both officers on the British side in the Revolution. His farm at Marshfield was that which Daniel Webster subsequently owned, and where he lived and died. *Nova Scotia Archives* p. 271. Thacher's *History of the Town of Plymouth*, pp. 142-43.

in a year, or to remain and become British subjects, at their option. Almost all remained, but declined to take the oath of allegiance to the British sovereign unless with a condition not to fight against France. Up to 1730 none of them had taken any oath except a few at Annapolis Royal. In 1727 on the accession of George II., an officer was sent to Minas, Grand-Pré and Chignecto to administer the oath of allegiance, who, contrary to his instructions, accepted it qualified by a clause exempting the Acadians from taking arms against France. This oath, which he reported was all that he could get them to take, the Government refused to acknowledge, and out of this transaction grew the claim of "Neutrality" so persistently claimed by the Acadians to the very last. Governor Phillips in 1730 obtained an oath from the Annapolis people, about 250 in number, in these words, being the only oath ever obtained from any of the French inhabitants of Nova Scotia : " Je Proméis et Jure Sincèrement en Foi de Chrétien que Je serai entièrement Fidèle, et obeirai vraiment, Sa Majesté Le Roy George le Second pour le Souverain Seigneur de l'Accadie ou Nouvelle Ecosse. Ainsi Dieu me Soit en Aide."<sup>1</sup> The rest of the French in Nova Scotia would not take even this. The Commissioners of Trade and Plantations, by their Secretary, Mr. Popple, in a despatch to Governor Phillips, dated London, 30th May, 1730, thus state the objection to this oath : " The oath indeed seems intended to have been a translation of the English oath of allegiance, but the different idiom of the two languages has given it another turn, for the particle 'To' in the English oath being omitted from the French translation, it stands a simple promise of fidelity without saying to whom ; for as the word 'Fidèle' can only refer to a dative case, and obéirai governs an accusative, King George has not a proper security given to him by the first part of this oath, and it is to be feared that the French Jesuits may explain this ambiguity so as to convince the people upon occasion that they are not under any obligation to be faithful to his Majesty, which might have been avoided if the oath had run as follows : Je Pro-

<sup>1</sup> Nova Scotia Archives, p. 85.

meis et Jure Sincerenent en foy Chretien que je serais entièrement fidèle a Sa Majesté le Roy George le second que je reconnais pour le Souverain Seigneur de la Nouvelle Ecosse et de l'Accadie et que je lui obeirais vrayment. Ainsi Dieu me Soit en Aide."<sup>1</sup>

From 1730 to the expulsion they steadily refused to take any oath except with the reservation above mentioned. Finally deputies from all parts of Nova Scotia were summoned to appear at Halifax in July, 1755, before the Governor and Council and informed that unless they took the oath they would be sent out of the country. They unanimously refused, "and declared this to be the sentiments of the whole people, whereupon the Council determined that they shall be removed out of the country as soon as possible."<sup>2</sup> Instructions to Lt. Colonel Winslow, commanding at Minas, and Major John Handfield at Annapolis, were given on the 11th of August, and in September the Acadians were transported to different places on the American continent. From Minas there were ordered to be sent, 500 persons to North Carolina, 1,000 to Virginia, and 500 to Maryland, and from Annapolis, 300 to Philadelphia, 200 to New York, 300 to Connecticut, and 200 to Boston.<sup>3</sup> Others were sent subsequently, some even to Louisiana, and almost the whole of the 7,000 souls which the Acadian French then numbered, were scattered throughout America. The transports for their removal and provisions for the voyagers were furnished by Messrs. Aphorpe and Hancock of Boston, at a total cost of about £7,000 sterling or nearly \$35,000.<sup>4</sup> "While we see plainly," says Murdoch in his History of Nova Scotia,<sup>5</sup> "that England could never really control this

<sup>1</sup> Nova Scotia Archives, pp. 84-5.

<sup>2</sup> Governor Lawrence's despatch of 31st July, 1755, to Colonel Moncton, Nova Scotia Archives, p. 267.

<sup>3</sup> Nova Scotia Archives, pp. 271-274.

<sup>4</sup> The separate charges for each vessel are given in Nova Scotia Archives, pp. 295-293, aggregating within a fraction of £7,000. Aphorpe was Charles Aphorpe, father-in-law of Robert Bayard, of New York. Hancock was Thomas Hancock, the uncle from whom the famous John Hancock received his fortune.

<sup>5</sup> Vol. II., p. 398.

province, while they remained in it, all our feelings of humanity are affected by the removal itself, and still more by the severity of the attendant circumstances. \* \* \* They were the victims of great error on their own part, and of delusive views that false friends had instilled into their minds, and the impulses of national ambition and jealousy precipitated their fate."

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## NOTE XLV.

GENERAL SCHUYLER.—HIS POLITICAL ACTION IN 1775.—  
HIS MILITARY FAME.

*Vol. II., p. 315.*

THE proceedings of the New York Assembly of 1775, given in their Journals, and in Note XIX. of the first volume, show precisely the political course of General Schuyler in that body and at that time. It has been much misstated both by his friends and his enemies, but the record speaks for itself and settles all questions.

His letter using the term "inveterate disorder," quoted by the author, was written to the New York Provincial Congress from Ticonderoga, on the 29th of September, 1775, after his return to that fortress from the Isle aux Noix. He inherited a tendency to gout, and it troubled him from his schoolboy days throughout his life. At the date mentioned, the attack was also complicated with a bilious fever. The sicknesses of General Schuyler had a good deal to do with his unpopularity as a General, but they were undoubtedly real. Many however, at that day and afterwards, on both sides, credited imputations on this score similar to those of the text. He was appointed a Major-General by the Continental Congress at the same time Washington was made Commander-in-chief, in June, 1775, and served till that body superseded him by Gates in 1777, after which he held no command. That act was as uncalled for as it was undeserved.

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And had it not been for the bitter New England prejudice to which he was sacrificed, he, and not Gates, would have received the Sword of Burgoyne. It is remarkable that the author does not allude to Schuyler's connection with the campaign of 1777. His military course and career have been much commented upon, and with great diversity of views. He was one of the sincerest and honestest of the prominent men of the Revolution, and his action in 1777 was noble. And if his papers and letters, and the letters written to him, that have been preserved, should be given to the world precisely as written, it would be a great boon to American History, and would in all probability dispel the unjust prejudices against the name and fame of the first New York Major-General in the service of the United States.<sup>1</sup>

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## NOTE XLVI.

WILLIAM ALEXANDER, GENERAL LORD STIRLING—CAUSE OF HIS GOING TO ENGLAND—IS SUED IN CHANCERY BY PETER VAN BRUGH LIVINGSTON—THE EARLDOM OF STIRLING AND HIS CLAIM THERETO — HIS LOTTERY SCHEME TO RELIEVE HIMSELF FROM DEBT—HIS SEAT AT BASKENRIDGE, ITS SPLENDOR AND ITS FALL.

*Vol. II., p. 320-323.*

WILLIAM ALEXANDER, the titular Earl of Stirling, an American Major-General in the war of the Revolution, was born in New York in 1726. The "industrious Dutch woman who kept a retail shop," whom, the text states, his father married, was the widow of Samuel Provoost,<sup>2</sup> a merchant of New

<sup>1</sup> Much has been done by the historian Lossing, in his "Life of Schuyler," to effect this object, but the papers themselves should be published in full.

<sup>2</sup> The statement sometimes made that she was the widow of *David Provoost*, "Ready Money Provoost," is a mistake. The Provoosts were very respectable French Huguenots.

York. She succeeded her husband in trade, "which she conducted in her own name, and for many years after her second marriage with James Alexander, and in which she amassed a fortune."<sup>1</sup> Her maiden name was Maria Sprot, or Sprat, as it was more correctly spelled. She was born 23d of April, 1693, and married Samuel Provoost, 15th October, 1711; he died in 1719, and she married James Alexander on New Year's day, 1721. Alexander died April 2d, 1756, leaving her again a widow with four daughters and one son, the latter of whom, named William, born in 1726, became the claimant of the title of Earl of Stirling.<sup>2</sup>

Out of the mercantile partnership with his brother-in-law, Peter Van Brugh Livingston, referred to in the text, and its connection with the furnishing of supplies for Shirley's army in 1755, grew, in 1771, a suit in chancery, brought by Livingston against Stirling, to recover money received by the latter from the Government in England on account, which was not paid over. Stirling's "Answer" in this suit, signed, and sworn to, by himself, on the 13th of February, 1771, and bearing also the signature of "Benjamin Kissam, of Counsel," who probably drew it, preserved in the records of the old Court of Chancery, at Albany, shows clearly that he only went to England to obtain the settlement of claims against the British Government. From it the following curious facts appear. That in 1755, William Shirley, commander-in-chief of his Majesty's forces in North America, appointed William Alexander, John Erving, jr., of Boston, and Lewis Morris of Westchester, New York, Agents to furnish provisions and stores" for the British forces under Shirley's command. "That "in consideration of one-fourth of the profits" the three abovenamed "Agents," through William Alexander, agreed with Peter Van Brugh Livingston, that he, Livingston, should do, and have the sole direction of, the whole business, and pay the other three-fourths to Alexander, Erving, and Morris, in equal shares. That on

<sup>1</sup> Purple's Genealogical Notes of the Provoost Family, p. 18. See also the advertisements in the newspapers of the day.

<sup>2</sup> Ibid., pp. 23, 24.

the 14th of January, 1756, Shirley made a new "appointment" of the same "Agents" for the same purposes, the business of which was carried out on the same terms, and which "lasted till the arrival of General Abercrombie as Commander-in-chief." That the settlement of these two "agencies" was effected in England by Alexander, who received *from time to time on account*, £10,426, 5, 4, sterling. That when the accounts were first presented to the Lords of the Treasury, they were not satisfied with them, and ordered them referred to Lord Loudon, Shirley's successor as Commander-in-chief, to pass upon, who objected to them. That then they were returned to Alexander, who recast them, "and was employed," the answer says, "with a clerk, in this work and making an abstract of the accounts and vouchers for near two months." That on being presented again, they were referred to the proper auditors, who made a second report to the Lords of the Treasury, on April 22d, 1761, but its nature is not stated. That the Lords of the Treasury did not act speedily upon this report, whereupon Alexander took the remarkable course which is thus set forth : "On finding his applications ineffectual this Defendant by the influence of his friends at Court was so fortunate as to be able to communicate his case to the Royal Ear, and did accordingly mention the same to the King himself. In consequence of which application to his Majesty this business was ordered to be dispatched. A special meeting was summoned for the purpose and an order obtained to Sir Jeffrey Amherst to cause the accounts to be liquidated and the Balance forthwith paid." Amherst was Lord Loudon's successor as Commander-in-chief in America, where the liquidation was to be made. The amount of the "Balance" is not stated, but the disbursements paid out in the different public offices in London is stated at "not less than six hundred pounds sterling." The defendant further says, that he "also expended large sums to support himself in a manner suitable to those connections which he made, and which it was proper for him to form and preserve, as a means of recourse to such persons whose interposition and influence were wanting to facilitate

and accomplish the business he was transacting for such Agents. Which expenses he verily believes were not less than five thousand guineas (*twenty-five thousand dollars*) during the four years which he was detained in England on that business." Thus this authentic document shows what was the real object of Lord Stirling's going to England, and that consequently his testimony before the House of Commons in Shirley's favor, and his setting up a claim to the Earldom of Stirling were mere incidents of his visit. It also shows that all the partners, Livingston, Alexander, Erving, and Morris, got into lawsuits with each other. Unfortunately there are no papers on file with it to show how this suit or any of the suits terminated, or whether they ever terminated at all. Perhaps the general ending which the breaking out of the Revolutionary war effected in all such matters was their final result. There are, however, preserved a bill or two of foreclosure of some of Lord Stirling's mortgages brought against him, and also against his executors, after the Revolution, by Peter Van Brugh Livingston. Of the three "Agents" to supply his troops so appointed by General Shirley, in 1755, Alexander was on his staff, Lewis Morris was the brother of another of his staff, Capt. Staats Long Morris, and John Erving, jr., was his son-in-law. Of his care for the latter's interest a curious illustration occurs in a letter written from Boston on the 5th of January in this very year 1755, to Governor Lawrence of Nova Scotia, relative to the supplies for Moncton's expedition against the French of Acadia, for which Governor Lawrence had given a letter of credit upon Apthorpe and Hancock of that city, in which Shirley says, "as I have a daughter lately marryd to a Mercht. here who is a young gentleman of extreme good character \* \* \* I think I shall not do anything unreasonable by Mr. Apthorpe and Mr. Hancock, if I request the favour of your Honour to let my son-in-law, Mr. John Erving, be joined with them in furnishing money and stores for this expedition upon the same terms they do," and further requests "that Mr. Erving might upon future occasions likewise be let into one third part of the benefit of the merchant

agents or future business for Nova Scotia, be that what it will."<sup>1</sup>

His visit to England was unfortunate for William Alexander, as while there he was induced to claim the Title of Earl of Stirling, which in the end proved his ruin. To understand his claim, a brief outline of the history of the Earldom is necessary. A little village, five miles from Stirling, called Menstrie, gave name to the lairdship or barony of Menstrie,<sup>2</sup> a small estate held under the Earl of Argyll by a family of Alexanders, by tradition, descended from an Alexander McDonald, whose Christian name they assumed as a patronymic. The fifth of these lairds of Menstrie, Alexander Alexander, died leaving a son, William Alexander, born about 1580, a man of education and culture, who travelled abroad with the Earl of Argyll, and was subsequently introduced at Court, and became a great favorite of Prince Henry and his father, King James I., and subsequently of Charles I. King James appointed him a Gentleman of the Prince's Chamber to Prince Henry, and made him Master of the Requests for Scotland, a high and responsible office, and in 1604 Knighted him. In 1630 he was made a Peer by Charles I. under the title of Viscount Stirling and Lord Alexander of Tullibody, and when that monarch signalized his coronation in Scotland by creating twenty-one new peers of different grades, he was raised on the 14th of June, 1633, to the dignity of *Earl of Stirling and Viscount Canada*. About fifteen years before this he became greatly interested in the colonization of America, and in 1621 obtained from James I. the great grant and charter of Nova Scotia; not the present province of that name, but an immense territory extending from Massachusetts to Labrador, including also Nantucket, Martha's Vineyard, Long Island, and a strip 300 miles wide, straight through the continent to the Gulf of California, with extensive fishing rights and other privileges, all of which were granted to him and his heirs forever. In 1625, Charles I. granted him

<sup>1</sup> Nova Scotia Archives, pp. 399, 400.

<sup>2</sup> "Baron" and "Barony" in Scotland does not denote nobility, it should be remembered.

this territory anew with enlarged rights and privileges, by what was called the charter of Novodamus, which was further supplemented by a charter of the "Country and Lordship of Canada" in 1628, and a patent from the Council of New England for the "County of Canada and of Long Island" in 1635, to his oldest son, William, Viscount Canada. This son died before him in 1638, and at his own death in February 1640-41 he was succeeded by his grandson, also named William, a child of eight years, who died in May, 1740-41, three months after his grandfather. The title and estates then passed to the child's uncle, Henry, the fourth and oldest surviving son of the first earl, who thus became the Third Earl of Sterling. He died August 16, 1644, leaving a son, Henry, who became the Fourth Earl, and three daughters, Mary, Judith, and Jane. The Fourth Earl died in 1690, and was succeeded by his son, also named Henry, as Fifth Earl, who died on the 4th of December, 1739, without issue, aged seventy-five years, when the male line became extinct, and the Peerage thus became vacant.<sup>1</sup> Eighteen years subsequently, in 1757, after he came to England, William Alexander, of New York, claimed the title, alleging that he was descended from John Alexander, a younger and the fourth son of the *First Earl*, and commenced proceedings in Scotland to obtain it. Subsequently, however, he changed the basis of his proceedings and claimed to be descended from John Alexander, an *uncle* of the *First Earl*. Thus substituting a collateral relationship for a direct lineal descent.<sup>2</sup> He succeeded in having himself returned under the Scottish law as next male heir of this collateral line, and at once assumed the title and arms of Earl of Stirling. Much against the views and advice of his lawyers, but in accordance with what he found, under the advice of the Duke of Newcastle, to be a necessity, he petitioned the House of Lords in the autumn of 1759, praying "that his majesty would declare and establish" his title. The pedigree

<sup>1</sup> Collins's Scotch Peerage, "Stirling." Slaster, "Sir William Alexander and American Colonization," Prince Society's Publications, 1873. In the latter learned work all the grants and charters are given in full.

<sup>2</sup> Duer's Life of Stirling, p. 47, note.

upon which he assumed the title, and which went before the House of Lords, was this : John Alexander, of Gogar, uncle to William, First Earl of Sterling, had a son Alexander born in 1602, he a son, David Alexander of Muthiel (date of birth not given), and he, a son James Alexander, who married Mary Sprat, of whom he, William Alexander of New York, was the only son.<sup>1</sup>

The action of the House of Lords in the matter is thus stated in their Journal for the 10th of March, 1762, volume xxx., p. 186.

"The Lord Willoughby, of Perham, reported from the Lords Committees for Privileges, to whom it was referred to consider of the petition of William Alexander, claiming the title of EARL OF STIRLING, with his Majesty's reference thereof to this House.

That the Committee have met to consider the matter to them referred ; but the agent for the said claimant, alleging that he was not prepared with evidence to make out the said claim and desiring further time, their Lordships have put off the further proceeding upon the said claim till the next Session of Parliament, and have come to the following resolutions, viz. :

*Resolved*, That it is the opinion of this Committee that the said William Alexander ought, to all intents and purposes, to be considered as having no right to the title by him assumed, until he shall have made out his said claim, and procured the same to be allowed in the legal course of determination ; and that in the meantime, until the same shall be so allowed, the said William Alexander, or any person claiming under him shall not be permitted to vote, by virtue of the said title, at the election of any Peer of Scotland to sit and vote in this House pursuant to the Articles of Union.

*Resolved*, That it is the opinion of this Committee that the said William Alexander be ordered not to presume to take upon himself the said title, honour, and dignity, until his claim shall have been allowed in due course of law ; and that notice of these Resolutions

<sup>1</sup> No pedigree is given in Duer's Life of Stirling. This is taken as given in Bank's Analytical Statement of the case of the Earl of Stirling, 1832, p. 125, Table II. This work is a brief and complete statement, with genealogical tables, of the extraordinary case of Alexander Humphrey's, who claimed and assumed the title of Earl of Stirling in 1826 and litigated it for about ten or twelve years, claiming as the great-great-grandson and heir male of the first Earl (through his fourth son John), in the female line. It gives a full genealogical table and statement of the American Lord Stirling's claim as well as his own. He failed because some of his papers were alleged to be forgeries. Several volumes are in print relating to the strange case of this man.

and Orders be given to the Lord Clerk, Register of Scotland. Which Report was read by the Clerk; And that said Resolutions, being read a second time, were severally agreed to by the House, and ordered accordingly."

This ended the matter, as no further steps in the House of Lords were ever taken on his behalf.

The severe penalty for a violation of such an order referred to in the text was only inflicted in cases of gross and continued disobedience. He did not give up the use of the title at all, but as he left England, after it was known what the report would be, and before the final action of the House upon it, he was out of its reach, even if it had desired, which is very doubtful, to have so punished him. Had the report been in his favor he would not probably have been in arms afterwards against Great Britain.

The Lottery mentioned in the text will be found fully advertised in Holt's New York Journal from April 8th, 1773, to the beginning of the Revolution, as "DELAWARE LOTTERY. For the SALE OF LANDS, belonging to the EARL OF STIRLING, in the Provinces of New York and New Jersey." There were 12,275 tickets at £4 N. Y. Currency each, 2,413 of which were prizes, from £5, the lowest, to £6,100, the highest, and the rest blanks. It was to have been drawn on the 20th of May, 1773, but after the manner of lotteries was postponed from time to time until the war ended the scheme.

Lord Stirling's seat at Baskenridge, New Jersey, is strikingly described by the venerable Mrs. Eliza Susan Morton Quincy, the wife of the late President Quincy, of Harvard University, in her autobiographic Memoir—her father's house during the war being near it.

"The seat of Lord Stirling, called by the country people 'The Buildings,' was two miles distant. Designed to imitate the residence of an English nobleman, it was unfinished when the war began. The stables, coach-houses, and other offices, ornamented with cupolas and gilded vanes, were built round a large paved court behind the mansion. The front, with piazzas, opened on a fine lawn, descending to a considerable stream called 'The Black River.' A large hall extended

through the centre of the house. On one side was a drawing-room, with painted walls and a stuccoed ceiling. Being taken there when a child, my imagination was struck with a style and splendor so different from all around. The daughters of Lord Stirling, called Lady Mary and Lady Kitty, afterwards Mrs. Watts and Mrs. Duer, the Miss Livingstons, afterwards Mrs. Kane and Mrs. Otto, and other cultivated and elegant women domesticated in the family, made an impression I can never forget, for they were all very pleasing and kind to me. . . . .

Ten years afterwards I again visited 'The Buildings,' but what a change had taken place! The family had removed, the house was tenanted by a farmer, and the hall and elegant drawing-room, converted into granaries, were filled with corn and wheat, and the paved court-yard with pigs and poultry.

The stables and coach-house were going to ruin, and through the door of the latter, which was falling off the hinges, I saw the state-coach of the fashion of Sir Charles Grandison's day. It was ornamented with gilded coronets, and coats of arms, blazoned on the panels, and the fowls were perching and roosting upon it."<sup>1</sup>

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#### NOTE XLVII.

##### WILLIAM DUER—HIS ORIGIN AND CAREER—HIS FAILURE, AND THE PANIC OF 1792 IN NEW YORK.

*Vol. II., p. 324*

WILLIAM DUER, an Englishman, was the third son of John Duer, a planter of Antigua, who had a villa in Devonshire in England, where his son was born. His mother was Frances

<sup>1</sup> Memoir of Eliza Susan Morton Quincy, p. 23.

Frye, daughter of Sir Frederick Frye who held a command in the West Indies, where she married John Duer. William was their third son, and after being sent to Eton School, and while still under age, was put into the army as an Ensign, and accompanied Lord Clive as an aid-de-camp, on his return to India as Governor-General in 1762. Suffering severely from the climate, Lord Clive sent him back to England, where he remained five years, till after his father's death. Having left the army he went to Antigua, and thence came to New York for the first time, in 1768, to arrange for a regular and constant supply of lumber for himself and friends for plantation purposes in Antigua and Dominica. This brought him in contact with General Schuyler, by whose advice he bought a large tract of timber land at Fort Miller (*on the upper Hudson*) including the falls, and erected extensive saw-mills thereon.

In 1773 he went again to England and obtained a contract to supply the Royal Navy with masts and spars.<sup>1</sup>

A MS. letter from his son William A. Duer to a relative, written in 1847, says: "He was at an early period of the war appointed by the Provincial Congress, Adjutant-General to their troops, but having been elected to the Convention and chosen one of the committee of Public Safety, he declined the military appointment. His subsequent career as member of Congress and Secretary of the Board of Treasury during the confederation, as well as the misfortunes which clouded and darkened the close of his life, must all be already too well known to you to render the repetition of them necessary." He married Catherine, the youngest of the two children of Lord Stirling. The reference at the close of the above letter, is to the disastrous result of Mr. Duer's reckless speculation, which produced that great social and commercial excitement and panic in New York in 1792, which was so long remembered—the first of the great "panics" which New York has periodically seen since 1783. The following extracts from two letters to the author from an intimate friend, in the editor's possession, written by a gentleman then living in the neighborhood of the

<sup>1</sup> MS. statement communicated by the Rev. Beverly R. Betts.

city, and personally acquainted with the parties he mentions, throw a vivid light upon the subject. In the first, dated March 29, 1792, he says : " We have the devil to pay ! *Col. Duer* has failed for they say three millions of dollars, and has taken in almost every person in the city, from the richest merchants to even the poorest women, and the little shopkeepers, women, and butchers. He is now in the new jail and they even talk of breaking it open to take him out and tear him piecemeal, and to hang every indorser of his notes if everything is not shortly settled. How it will end God only knows ; it has put a stop to general business and money is so exceedingly scarce that his Runners go about with his printed notes indorsed and signed, but no sum inserted, and if they could find a lender, they give four per cent. a month and put it in the note. Walter Livingston and Company have stopped payment, and many more must, as nobody will lend a shilling." In the second letter, dated April 3, 1792, the writer says : " The confusion still increases in New York, and I expect to hear daily that they have broke open the jail and taken out Duer and Walter Livingston, and hanged them ; the most prudent of those who have failed have ran off, and I think we shall have much such riots as there was in London in 1780.<sup>1</sup> Pierre de Peyster, when Duer failed, went to him with a brace of pistols, and, after getting him alone and locking the door, told him he might as well lose his life as his money, and that if he did not pay him directly he must fight him ; and pulling out a pair of pistols told him to take his choice, for that one of them should never go out of the room alive if he did not get his money. The gallant Colonel thought it most prudent to pay the 1,500 dollars and get rid of the Tory. You may form some idea of the generality of this business when I tell you John Johnstone told me he did not think Duer would get a single lawyer in New York who would dare to undertake his cause, a jury that would find a verdict, or a judge that would recommend them to bring in any of his transactions of an usurious nature. Cash is so scarce, I have been offered five per cent. a month, and to have any sort of publick securities

<sup>1</sup> This allusion is to the famous Lord George Gordon riots.

lodged in my hands to make me safe, and as for confidence there is no such thing, not a grocer can get credit for a hogshead of sugar or a puncheon of rum."

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#### NOTE XLVIII.

##### GEORGE CLINTON—HIS FIRST OFFICE—MARRIAGE—SEVERITY TO LOYALISTS—MENTAL CHARACTERISTICS—BOLD SPEECH IN THE ASSEMBLY OF 1755.

*Vol. II., pp. 325-329.*

GEORGE CLINTON retained the office of Clerk of Ulster County under the new State organization of New York, as stated in the text, not "under a grant from a Committee of Appointment," but under a resolution of the Provincial Convention, passed May 8, 1777.<sup>1</sup>

The "pretty Dutch girl" he married at Kingston, and through whom he attained his strong position in Ulster County (then embracing the present County of Orange), was Miss Cornelia Tappen, and their marriage license, on file in the Secretary of State's office at Albany, is dated October 28, 1769.

The treatment of "tories" by the County and Town Committees, and Committees of Safety, and Committees to Detect Conspiracies in New York, was incredible in its severity, not only in Ulster, but in every County of the State. The committees and their officers exercised the most arbitrary and despotic powers over persons and property, under resolutions of the Provincial Convention of the Continental Congress, and of the Town or County meetings by which they were appointed,<sup>2</sup> at which meetings no one was allowed to

<sup>1</sup> *Journal of Prov. Con.*, Vol. I., p. 216.

<sup>2</sup> See resolutions in *Journal Prov. Con.*, Vol. I., pp. 131, 132, and 215. See also, the powers granted to the "Committee to Detect Conspiracies," by the N. Y. Provincial Convention, on 21st Sept., 1776. *Journal Prov. Con.*, Vol. I., p. 638.

vote unless a known friend of the American cause. "It will scarcely now be credited," says a late writer, speaking of these bodies, "that powers so undefined and extraordinary should have been intrusted to a few individuals by a people so jealous of encroachments, whose sense of liberty was so keen as to 'snuff the approach of tyranny in every tainted breeze,' and who, on their own part, had gone to war against a preamble."<sup>1</sup> The MS. minutes of a few of these bodies, still in existence,<sup>2</sup> are filled with instances of the kind spoken of in the text, and petitions of their victims for justice and mercy.<sup>3</sup> Some of these proceedings and petitions may be seen in the two volumes of the printed Journals of the N. Y. Provincial Convention and Committee of Safety, and in the two volumes of "Revolutionary Papers," published by the State of New York.

George Clinton, severe as he was, acted not from any desire of cruelty or revenge, but simply from the natural boldness and decision which were so marked in his character. His strong common-sense and unflinching nerve, led him to adopt the surest and most certain means to attain his objects. In these respects he excelled by far all his contemporaries. He was, so to speak, the most masculine of all the men of New York on the American side in the Revolution. Not one of them, great and brilliant as many of them were, could

<sup>1</sup> Henry C. van Schaack's Life of Peter van Schaack, p. 67.

<sup>2</sup> In the State Library and Secretary of State's office at Albany, and in the N. Y. Historical Society's Library.

<sup>3</sup> As a specimen take the following, which occurred just opposite Ulster County, on the other side of the Hudson, in Dutchess, nearly a year before the Declaration of Independence.

"ALBANY, Sept. 27, 1775.

"We hear from Dutchess County, that on Saturday, the 16th instant, *James Smith*, Esq., a Judge of the Court of Common Pleas for that county, was very handsomely tarred and feathered for acting in open contempt of the Resolves of the County Committee, as was *Coen Smith*, of the same place, for like behaviour. The Judge undertook to sue for and recover the arms taken from the Tories by order of said Committee, and actually committed one of Committee who assisted at disarming the Tories, which enraged the people so much, that they rose and rescued the prisoner, and poured out their resentment on this villainous retailer of the law."—Force's Am. Archives, Fourth Series, Vol. III., p. 823.

ever have retained, as he did, the Governorship of New York, by successive elections, not only for "ten years," as he had when the author wrote his sketch, but for *eighteen.*<sup>2</sup>

The author, however, is mistaken in saying that in the Colonial Assembly in January, 1775, Clinton moved the consideration of the proceedings of the Continental Congress of 1774. The Journals show that it was Abraham Ten Broeck,<sup>1</sup> but it does *not* show who seconded it, nor that there was any debate. Clinton offered several amendments and resolutions, as the proceedings prove. The author's sketch of the debate is most interesting, and the bold statement that he reports Clinton to have made is as striking as it is consonant with his great but overbearing character. Governor Colden refers to this debate in a despatch to the Earl of Dartmouth, the Minister in England, of February 1st, 1775. After stating that a call of the House was proposed for the 7th of February, in order to get nine members present,<sup>2</sup> he says : " This the House agreed to, and immediately sent out orders for the absent members to attend. However, two members coming in last week, who were known to be violent in their opposition to Government, a motion was made that the House should take into consideration the Proceedings of the Congress held at Philadelphia in September last. A warm debate ensued, and upon the previous question the motion was rejected by eleven to ten. These ten are, my Lord, the whole strength of that Party. The nine members which have not yet appeared in the House, it is well known, will join the eleven." And in his next despatch, of the 1st of March, 1775, he says : " The Assembly have been very firm in rejecting several attempts to draw them into an approbation of the Proceedings of the Continental Congress."

<sup>1</sup> See Note XIX., Vol. I.

<sup>2</sup> Col. Hist. N. Y., Vol. VIII., p. 551. Note XVIII., Vol. I., p. 493.

## NOTE XLIX.

**THE CAPTURE AND SUBSEQUENT DEATH OF GENERAL WOODHULL—THE DOCUMENTS RELATING THERETO—THE DIFFERENT VERSIONS OF THE STORY.***Vol. II., p. 331.*

THE connection between the families of the author and General Woodhull, the long personal acquaintance of the two gentlemen, the author's presence at his home in Queens County for nearly four years after the occurrence—save only two short intervals, one of about four months and the other of about six, when he was a prisoner in Connecticut ;—the facts that Richard Floyd, of Mastick in Suffolk County, his sister's husband, and the wife of General Woodhull, who was a native and resident of Mastick, born Ruth Floyd, were first cousins, and also near neighbors at Mastick ; and that these two ladies were warm friends before and after the General's death, and as long as they lived ; enabled him to know perfectly the facts of the case. Added to this are the further facts, that his own wife, born Anne de Lancey, third daughter of Governor de Lancey, and Oliver de Lancey—the officer, whom several accounts say, saved the General's life, and one says, struck him himself after his capture and permitted his men to cut him—were first cousins, and that he personally knew Oliver de Lancey as well as he did Woodhull ; and it is clear that the author's account has an authenticity that no other of the various versions of this occurrence can possibly possess. The following affidavit, made solely in consequence of the accidental destruction of the paper it mentions, demonstrates the close intimacy of the families of the author and of Woodhull, and their mutual confidence.

“STATE OF NEW YORK, ss. : Mrs. Ruth Woodhull, widow of the late General Nathaniel Woodhull, of Suffolk County, in State of New York, being duly sworn, deposeth and saith, that some time in the year of our Lord, one thousand seven hundred and eighty-three,

VOL. II.—38

Mrs. Arrabella Floyd, wife of Coll. Richard Floyd, of Suffolk County, aforesaid, desired her to take into her care the last Will and Testament of her Father, David Jones, Esq.,<sup>1</sup> deceased; that she, the said Mrs. Floyd told the Deponent that she had consulted her Brother, Thomas Jones,<sup>2</sup> Esq., who was then in England, on that subject, and that he approved this deponent having the custody of the said Will; and this deponent further saith, that the said Will of the said David Jones was actually delivered to her by the said Mrs. Floyd in a paper sealed, and that the said Mrs. Floyd declared it was her father's will, and that she, the deponent, deposited the same together with her Husband's Will<sup>3</sup> and other papers, in a seal-skin trunk; and that on the fifth day of April, in the year of our Lord, one thousand seven hundred and eighty-four, the House of deponent took fire, and that the said Trunk, together with the said Will of the said David Jones, and all other the said papers contained in the said Trunk, and a Quantity of plate and Furniture of Mrs. Floyd's, together with almost the whole of the Deponent's Furniture, were destroyed and consumed with the said House; and this deponent further saith that the Reason of depositing the said will with her was, that then there was reason to believe, that the House of the said deponent was not in danger of being plundered by the Americans, who about that time Frequently landed at or near the said place and committed Depredations on such persons as were supposed by them not to be well attached to their cause; and further this Deponent saith not.

RUTH WOODHULL.<sup>4</sup>

Sworn before me,  
in Brookhaven, this second  
day of November, 1792,  
SELAH STRONG, Judge."

Brigadier-General Woodhull, one of the three delegates from Suffolk County to the Provincial Convention of New York, was the President of that body, which was sitting at Harlem, in the city of New York, when, on the 10th of August, 1776, he obtained leave of absence to go home on private business.<sup>5</sup> On the 22d of the same month, twelve days

<sup>1</sup> Judge David Jones, who died at Fort Neck, the 11th of October, 1775, while his son, the author, was absent holding the Supreme Court at Albany.

<sup>2</sup> The author.

<sup>3</sup> General Woodhull's will.

<sup>4</sup> From the original MS. in the Editor's possession. The clause at the end refers to the Connecticut whale-boat robberies, and the description is noteworthy as being written nine years after the close of the Revolution.

<sup>5</sup> Journals Prov. Con., Vol. I., p. 566. He had been appointed, in August, 1775, Brigadier-General of the militia of Queens and Suffolk by that body.

later, "on a summons of the members and ring of the bell," "the Convention suddenly and unexpectedly convened" to consider a letter from Gov. Livingston, of New Jersey, to Washington, sent by the latter to the Convention, written the day before, giving the report of one of his spies of the force of the British army on Staten Island, and the embarkation of part of it for Long Island, and also saying "they have eat up all the cattle, and are now killing and barrelling up all the horses they meet with," and that "£10 was given for a horse, and ten dollars for a sheep." Mr. John Sloss Hobart, who presented the letter, said at the same time that a landing on Long Island had been made. This information was referred to a committee, who made a report (not given in the Journal) the next day, which after much discussion was recommitted to the deputies from Suffolk and Queens, who reported on the 24th "That Brigadier-General Woodhull, or, in his absence, Lt. Colonel Potter, march, without delay, one-half of the western regiment of the militia of Suffolk County, with 5 days provisions, into the western parts of Queen's County; that the officers of the militia in Queen's County immediately order out the whole militia of that County, together with their troop of horse, and that the said officers of militia and troop of horse use all possible diligence to prevent the stock and other provisions in Queen's County from falling into the hands of the enemy, either by removing them out of their way, or if that cannot be effected, by destroying them, until they shall receive more particular directions from this Convention," which was unanimously agreed to. On the afternoon of the same day, the 24th of August, the same committee reported a preamble and six resolutions, the first of which directed "That all the horses, horned cattle, and sheep, belonging to the south of the ridge of hills in Queens County, be forthwith removed and put into the fields at the east end of Hemstead Plains, there to be and remain under a sufficient number of keepers at the discretion of Brigadier-General Woodhull, until he shall judge it necessary to remove them further eastward." The second and third authorized General Woodhull to burn grain, destroy

mills, and kill stock in case of necessity ; and the fourth directed, "That Brigadier-General Woodhull, with the troops under his command, take post on the high grounds running through Nassau Island, as near to the enemy as he may think expedient, for the purpose of opposing their incursions ; and that whenever it shall appear probable to him that the enemy will gain possession of those heights, and of the country to the northward and eastward of the same, he retreat, removing and destroying the stock and the grain, and dismantling the mills in the manner above directed." The fifth gave the militia Continental pay, and the sixth appointed Robert Townsend Commissary, and sent him, William Smith, of Suffolk, and Samuel Townsend, as a committee to Washington, with a copy of the resolutions, and to request him to order Col. Smith's and Col. Remsen's regiments (*then in the lines at Brooklyn*) to join the force of Woodhull, "ordered out by a resolve of this Morning for calling out a part of Genl. Woodhull's Brigade." The above extracts, all of which are from the Journals of the Provincial Convention,<sup>1</sup> show exactly the duty upon which Woodhull was employed, how he came to be ordered upon it, and how important the Convention thought stopping the meat supplies. Woodhull arrived at Jamaica from his Suffolk home, on Saturday, the 25th, and the same day wrote the Convention. (This letter is not given in the Journals, and is missing.)

They answered on the 26th by a committee, which, previously, on the same day, had been appointed to draw up instructions for his guidance, who enclosed their "instructions," which were similar to the resolutions above mentioned, in a letter, saying, that Washington had promised to send him Remsen's and Smith's regiments.<sup>2</sup> This he acknowledged on the 27th, from Jamaica, saying, that he was at that place with "less than 100 men," but could do nothing without reinforcements, that Smith and Remsen could not join him, and that he would have to retreat, unless he had assistance.<sup>3</sup> The Con-

<sup>1</sup> Journals Prov. Con., Vol. I., pp. 585 to 588.

<sup>2</sup> Ibid., pp. 589 and 590.

<sup>3</sup> Ibid., p. 593.

vention got this letter in the morning, and in the afternoon they received another, written the same day, the 27th, but dated "Westward of Queen's County," thus showing that the general was at a different place from where he had written the morning letter, and enclosing "a copy of a letter from Col. Potter, who left me yesterday, at 11 o'clock, after bringing about a 100 men to me at Jamaica. Major Smith has, I expect, all the rest that was to come from Suffolk County. There has about 40 of the militia joined me from the regiments in Queen's County, and about 50 of the troop belonging to King's and Queen's, which is near all I expect;" also saying that he had driven the cattle east of the King's County line, and that "I am within about six miles of the enemy's camp; their light horse has been within about two miles, and unless I have more men, our stay here will answer no purpose."<sup>1</sup> The very next day he sent the Convention another letter, which proved to be his last, in these words:

*"Jamaica, August 28, 1776.*

"GENTLEMEN:—I wrote two letters to you yesterday, one by express, and another by Mr. Harper, and also sent my brigade-major<sup>2</sup> to you to let you know my situation, and I expected an answer to some of them last night, but my express informed me that he was detained till last night for an answer. I have now received yours of the 28th, which is only a copy of the last, without a single word of answer to my letters, or the message by my brigade-major. I must again let you know my situation. I have about seventy men, and about twenty of the troop, which is all the force I have or can expect, and I am daily growing less in number. The people are so alarmed in Suffolk, that they will not any more of them march; and as to Colonel Smith's and Remsen's regiments, they cannot join me, for the communication is cut off between us. I have sent about eleven hundred cattle to the great fields on the plains yesterday, about three hundred more are gone off this morning to the same place; and I have ordered a guard of an officer and seven privates. They can get no water in these fields. My men and horses are worn out with fatigue. The cattle are not all gone off toward Hempstead; I ordered them yesterday, but they were not able to take them along. I brought yesterday about three hundred from Newtown. I think the cattle are in as much danger on the north as on the south side, and have ordered the inhabitants to remove them. If you cannot send

<sup>1</sup> Journals Prov. Con., Vol. I., p. 594.

<sup>2</sup> Jonathan Lawrence.

me an immediate reinforcement, I am afraid I shall have no men with me by to-morrow night, for they consider themselves in an enemy's country ; and if I can have no reinforcement, I beg you will send very particular directions what I shall do with the stock ; whether I shall kill them or leave them, for I shall not be able to get them all together, and tend them, if the men I have will all stay with me. I beg you would immediately send at least two members as a Committee, that I may have their advice, for unless you do, I must quit, for I hope the Convention does not expect me to make brick without straw.

I am, gentlemen, your most obedient servant,  
NATHL. WOODHULL.<sup>1</sup>

The Convention sent *him* no answers to the two letters of the 27th, but despatched a copy of the last of them to Washington, on the morning of the 28th, by Brigade-Major Lawrence, asking him again to send to Woodhull, Smith's and Remsen's regiments, and to concert with the Major how the junction was to be effected. Immediately, however, on the receipt of the foregoing letter of the 28th, the Convention despatched John Sloss Hobart and James Townsend to Woodhull, in accordance with his request ; but, on arriving in Queen's, they heard the news of his capture, and retired to Huntington, in Suffolk County.

On the evening of the 28th of August, 1776, Woodhull was surprised, and captured, and subsequently wounded in attempting to escape, as stated in the text, at Carpenter's tavern, which is still standing, and still a tavern, on the main road, two miles east of Jamaica Village.

"Sir William Erskine," says the British Military Calendar, "the day after the battle of Brooklyn, was detached with the 17th Light Dragoons, and the 71st Foot, in pursuit of General Woodhull's corps of cavalry at Jamaica, which they defeated, and took Woodhull and many prisoners."<sup>2</sup>

On the 31st of August, three days afterwards, three letters mentioning the affair were written ; one from Southold by Robert Hempstead, Chairman of Suffolk County Committee,

<sup>1</sup> Force's Am. Archives, Fifth Series, Vol. I., p. 1548. It is a remarkable fact that this letter, as given in the Prov. Con. Journals, Vol. I., p. 596, omits all the latter part, after the words, "*immediate reinforcement.*"

<sup>2</sup> British Military Calendar, Vol. I., p. 106.

to Gov. Trumbull, saying: "Their scouting party consists of about three hundred Light Horse and four hundred Foot, together with a number of Tory Recruits, and to all appearances are about penetrating into this County, *as they have already marched as far as the western part of Hempstead Plains, where they took prisoner General Nathaniel Woodhull, Commander-in-Chief of the militia of this Island.*"<sup>1</sup> The second, by Col. Henry B. Livingston to Washington, also written from Southold, saying: "So many reports daily circulate here with respect to the strength and advantageous position of our enemies, that it is very difficult to give your Excellency a distinct account. *They are now possessed of Hempstead Plains; their Horse are continually employed in disarming the inhabitants, but do them no other injury; General Woodhull was taken a prisoner, and treated cruelly by them. After he was taken he received a wound in his head and much uncivil language, and was finally committed a close prisoner to Jamaica jail.*"<sup>2</sup> The third, by John Sloss Hobart and James Townsend, the committee sent by the New York Convention to Woodhull, on the receipt of his letter of the 28th, written from Huntington, in which they say: "We have exerted ourselves to recover the people from the consternation into which they were thrown by the precipitate retreat of General Woodhull's party. We have in some measure succeeded . . . . but such a total depression prevailed upon our arrival, that twenty horsemen could have ravaged the whole country."<sup>3</sup>

The formal account of the capture brought to the knowledge of the Committee of Safety, came from their own examination of William Warne, wheelwright, and of Dr Theodorus Van Wyck, who had heard Warne speak of it, and

<sup>1</sup> The italics in *all* the statements are used in this note for the reader's convenience merely. They are not in the originals.—Force's Am. Archives, Fifth Series, Vol. I., p. 1261.

<sup>2</sup> Ibid., p. 1261.

<sup>3</sup> Ibid., 1260. "*To our unspeakable mortification we found, when we arrived in Queen's County, that the militia had dispersed, and General Woodhull had fallen into the hands of the enemy.*"—Letter of 30th Aug., from same to same. Ibid., 1233.

is given in their Journal. This committee made all their official examinations under oath, and their official record is as follows:

At their session on Monday P.M., September 9th, 1776, "The Committee were informed that Wm. Warne, who has been apprehended by their order, is attending in custody.

"Ordered, that he be brought in for examination.

"Mr. Warne of Fishkill, wheelwright, being examined says, that the news he told that 30,000 men were arrived on Long Island, he heard on Long Island from the inhabitants; that he came from Long Island on Thursday last." And then, after stating the numbers of the British forces, continues: "That Dr. Ogden informed him that Suffolk County had given up; that General Howe had sent to Suffolk County, that if they would submit and testify their loyalty they must send him 200 wagons, and that near 300 had passed his house; that one of the light horsemen told he had taken Gen. Woodhull in the dark in a barn; that before he would answer when he spoke to the General, he had cut him on the head and both arms."<sup>1</sup>

On the 10th of September, 1776, the next day, in the Journal of the Committee of Safety, is this entry:

"Dr. Theodorus van Wyck was first called in and sworn; he delivered his testimony in writing; being cross-examined by William Warne, such additions thereto as became necessary were added, and the testimony is as follows:

"I saw William Warne the 7th instant, who told me he left Long Island the 5th, in the evening (*seven days after Woodhull's capture*), and says the regular army in Long Island is upward of 30,000 strong; that 10,000 lately arrived from Staten Island, that 15,000 was daily expected; that Burgoyne's army of regulars, Canadians and Indians, was 15,000; that they had spies throughout the Continent, and had intelligence of each other frequently; that in the late skirmishes on Long Island we had lost in killed, prisoners, and wounded, 2,500; that when our troops evacuated Long Island we left all our cannon and provisions; that our army

<sup>1</sup> Journals of the Com. of Safety, in Journal Prov. Con., Vol. I., p. 617.

behaved ill, saving two regiments, viz. : a Jersey regiment and Col. Lusher's regiment ; the latter but a few escaped ; that the regulars' loss did not amount to 200 ; that General Woodhull was taken, with Increase Carpenter, in said Carpenter's barn ; that General Howe sent to the Inhabitants of Suffolk to come in, and to show their loyalty to send down 200 wagons ; they immediately sent 300 wagons ; he likewise told me he was almost a tory, and advised us all to turn tories, that the King would certainly overcome us ; that the said William Warne informed him he heard the above mentioned matters from David Colden, a surgeon in the army, several of the light horse, and Doctor Ogden ; that he did not say he knew any of these things of his own knowledge.

THEODS. VAN WYCK, Junr.

Sworn before me this 10th }  
September, 1776. }

ABM. YATES, Junr., President.<sup>1</sup>

It appears from this testimony that this account comes through Warne, from the very light horseman, a private, who inflicted the wounds upon Woodhull, under the circumstances stated ; and that it was reduced to writing as a record, just eleven days after the capture.

Another statement is given in a letter dated "New Haven, September 4, 1776 (the substance of which was also printed in the Hartford Courant of Sept. 9th, 1776), giving an account of the retreat from Long Island and the subsequent circumstances, which says : "Colonel Woodhull, late President of the New York Congress, for refusing to give up his side arms, was wounded on the head with a cutlass, and had a bayonet thrust through his arm."<sup>2</sup>

The Continental Congress, on the 16th of January, 1777, appointed a Committee of seven, Messrs. Chase, Witherspoon, Clark, Lewis, Ross, Hayward, and Smith, "to inquire

<sup>1</sup> Proceedings of Com. of Safety, in Journals Prov. Con., Vol. I., p. 619.

<sup>2</sup> This letter is given in Force's Am. Archives, Fifth Series, Vol. II., p. 169. It is also found in Moore's Diary of the Am. Revolution, Vol. I., p. 305, credited to Freeman's Journal, September 14th and 28th.

into the conduct of the British and Hessian generals and officers, towards the officers, soldiers, and mariners in the service of these United States; and also into the conduct of the said generals and officers and the troops under their command, towards the subjects of these States and their property, more especially of the States of New York and New Jersey."<sup>1</sup> This committee took testimony, and made a report on the 18th of April, in very severe but general terms, mentioning no specific instances of ill-treatment, and no names, but arraigning the British army and officers generally in the strongest language, which was accepted, and the committee authorized to publish it, with some affidavits of offenses against women, which affidavits are alluded to but not given in the report.<sup>2</sup>

On the 28th of May, 1777, in the Council of Safety of New York, John Jay, from a committee, consisting of himself, Mr. Livingston, and Mr. Gouverneur Morris, reported the following letter on the subject to New York delegates in the Continental Congress, which was approved and sent.

GENTLEMEN:—The Council of Safety are of opinion that the report of the Committee of Congress relative to the cruelties of the enemy towards their prisoners will be productive of very good effects, if properly published and distributed, which they think cannot be done so well by parcels in a newspaper, as altogether in a pamphlet. They therefore desire and enjoin you to use your best endeavours to obtain a resolution of Congress for immediately printing that report and the affidavits referred to in it, in a pamphlet form, and at the expence of this State. I am also directed to suggest to you that in the opinion of the Council, it would be useful to send a number of copies to Europe and the West Indies; they would furnish the advocates of humanity and the rights of mankind with a proper idea of the spirit with which the King of Britain wages and conducts this wicked war against us."<sup>3</sup>

Mr. Gouverneur Morris had previously, on the 7th January, 1777, been appointed by the Committee of Safety of New York, "to take the deposition of the officers and others lately come from New York, relative to the ill-treatment of

<sup>1</sup> Journals of Congress, 1777, p. 25.

<sup>2</sup> See the report in full in the Journals of Congress, 1777, pp. 144-146.

<sup>3</sup> Journal of Council of Safety, in Journals Prov. Con., Vol. I., p. 947.

prisoners by the enemy."<sup>1</sup> Seven days after the appointment of the above committee by the Continental Congress, and on the 23d of January, 1777, Mr. Chase, its Chairman, wrote the New York Provincial Convention on the subject, and Mr. Morris replied by the following letter :

*"Kingston, 12th March, 1777.*

"SIR,—By the Convention of the State of New York,<sup>2</sup> I was ordered to prepare a narrative of the conduct of the British officers and troops towards the American prisoners, and to collect affidavits for that purpose ; I had been so constantly employed in other business before the receipt of your favor of the 23d of January, which we received three days ago, that I had made no progress in one part of the business committed to me, and very little of the other ; at present our session at this place is so much out of the road of information that it will be impracticable to collect any thing of importance. Agreeable to the orders of Convention, I take the liberty to enclose to you the few affidavits I have taken, and beg leave to say that I am, with great respect, Sir, your most obedient and most humble servant,

GOUV. MORRIS."<sup>3</sup>

To Saml. Chase, Esq.<sup>4</sup>

The affidavits enclosed in this letter were *three only*, all taken in "Dutchess County;" one of a quaker, Henry Franklin, who was in New York two days after the fall of Mt. Washington, taken on the 16th of January, 1777, and one of Adolf Myer, of Harlem, a private of Lasher's Regiment, captured at the attack on Montresor's Island, taken February 5th, 1777, both giving accounts of the prisoners in the North Dutch Church in New York; and one of Robert Troup, a young lieutenant of Lasher's Regiment, captured "about three in the morning of the 27th of August," on Long Island, taken January 17th, 1777, the object of which was to state his own case, which it does at very great length and particularity, and with much detail.

7

<sup>1</sup> Journal of the Committee of Safety, included in Journals Prov. Con., Vol. I., p. 762.

<sup>2</sup> Mr. Morris erred here ; he was appointed by the Committee of Safety, as its Journal above cited shows. It was a special committee appointed to act while the Convention was not sitting.

<sup>3</sup> Journals Prov. Con., Vol. II., p. 410.

<sup>4</sup> A delegate from Maryland in the Continental Congress, and subsequently to the war the United States Judge so famous for his impeachment and acquittal.

This affidavit, distinctly and avowedly drawn for the special purpose, and under the circumstances stated in the above official documents, and nearly five months subsequently to the capture, has a brief, final paragraph, referring to Woodhull, in these words :

" And this deponent further saith that while he was as aforesaid confined on board the said transport, Brigadier General Woodhull was also brought on board in a shocking mangled condition ; that deponent asked the General the particulars of his capture, and was told by the said General that he had been taken by a party of light horse under the command of Capt. Oliver de Lancey ; that he was asked by the said Captain if he would surrender, that he answered in the affirmative, provided he would treat him like a gentleman, which Captain De Lancey assured him he would, whereupon the General delivered his sword, and that immediately after, the said Oliver De Lancey junr. struck him, and others of the said party imitating his example, did cruelly hack and cut him in the manner he then was ; that although he was in such a horrid and mangled situation, he had nevertheless been obliged to sleep on the bare floor of the said transport, if a lieutenant of the Man of War who guarded the transport, had not lent him a mattrass ; that General Woodhull was afterwards carried to the hospital in the Church of New Utrecht where he perished, as deponent was on good authority informed, through want of care and necessaries ; and further this deponent saith not.

ROB. TROUP."<sup>1</sup>

Sworn the 17th Jan<sup>y</sup> 1777,  
before me Gouv. Morris.

Thus the only two sworn accounts of the incidents of the capture that exist, one purporting to come from the light horseman who wounded Woodhull, through Warne, and the other purporting to come from Woodhull himself, through Troup, differ as essentially as to those incidents, as they do in the circumstances under which they were made and reduced to writing.

One portion of Troup's account is certainly wrong ; that stating that Woodhull perished through want of care and necessaries, for John Sloss Hobart, who on the 18th of Sep-

<sup>1</sup> Journals, 410, 411, where all three affidavits are printed in full. The original of Troup's affidavit is on quarto paper, and fills several pages, the last of which contains the Woodhull statement. It is in a bound volume of manuscripts, in the Secretary of State's Office at Albany.

tember was sent by the Provincial Convention with a list of prisoners to Washington, to negotiate for Woodhull's release,<sup>1</sup> gives that body the following account of his death, proving that when he died his wife was present, taking care of him :

“ FAIRFIELD, October 7<sup>th</sup>, 1776.

“ GENTLEMEN—I wrote the Convention from the camp of Kingsbridge giving an account of the progress I had made in negotiating the exchange of General Woodhull; since which I have received the melancholy intelligence of his death. The wound in his arm mortified—the arm was taken off—but the mortification still continued, and in a few days put an end to that useful life. He was attended in his dying moments by his lady, who was permitted to remove the corpse to his seat, where it was interred about the 23<sup>d</sup> ulto. These particulars I have from Capt. Strong, of Islip, by whose door the procession passed in its way to St. George's.”<sup>2</sup>

No mention of this affidavit, nor of any ill-treatment of Woodhull, is made in the Journals of the Committee of Safety, nor of the Provincial Convention; nor is there any report whatever from Gouverneur Morris.<sup>3</sup> Had the facts been as stated by Troup, some resolutions of indignation would have been passed, or some such action would naturally have been taken; but there is nothing of the kind in their journals, either before or after his death. Three weeks after the capture, and on the 18th of September, 1776, the Provincial Convention passed the following resolution for his exchange; they knew at this date, officially, all the circumstances as given in the foregoing letters, and the examinations of Warne and Van Wyck, and they, of course, had heard the current stories in circulation at the time, whatever they were. They had, therefore, a most fitting opportunity to know and to denounce any cruelty or inhumanity that had occurred; yet their resolution, passed, as it says itself, “after many anxious inquiries” on the subject, not only does nothing of the kind,

<sup>1</sup> Jour. Prov. Con., Vol. I., p. 630.

<sup>2</sup> Ibid., p. 671.

<sup>3</sup> His letter to Chase and the three affidavits are among the MS. Correspondence, etc., of the Convention, and are so printed in the volume of its Correspondence, etc., being Vol. II. of the Provincial Journals, p. 410.

but is absolutely silent as to any inhumanity. It is in these words :

" WHEREAS this Convention, after many anxious inquiries, hath at length received certain intelligence that the Honble. Nathaniel Wood-hull, Brigadier-General of the Militia, and President of the Convention of this State, is at present in the hands of the enemy, and that he was made captive whilst actually employed in executing the resolutions of this house ; AND WHEREAS they are loudly called upon not only by the sacred voice of honor and public duty, but likewise by the sympathizing principles of personal affection and respect, to exert themselves in restoring so valuable a person to that liberty which he has himself lost, in endeavouring to secure to others that inestimable blessing ; Therefore,

" Resolved, that a list of prisoners at the disposal of this State, be immediately made out and transmitted to General Washington ; and that John Sloss Hobart, Esquire, wait upon his Excellency with the earnest request of this Convention, that he will be pleased to give his assistance and advice in negotiating this exchange." <sup>1</sup>

This is all of what may be called the documentary evidence of the circumstances of the capture of Woodhull.

The statements of different writers upon this subject shall next be given.

Silas Wood, of Huntington, the earliest of the Long Island writers on Long Island history, gives the first account of Woodhull's capture published in a book. It appears on pages 129 and 130 of " A Sketch of the First Settlement of the Several Towns on Long Island, with their Political condition to the end of the American Revolution. Brooklyn, 1828." <sup>2</sup> He says :

" On the morning of the 28th he ordered his troops to fall back and take a station about four miles east of Jamaica, and there to remain till further orders. The General remained at Jamaica till afternoon, in momentary expectation of a message from the Convention. He then retired slowly with one or two companions, still indulging the hope of intelligence from the Convention, until he fell a sacrifice to his reliance on their vigilance and his own high sense of military

<sup>1</sup> Journals Prov. Con., Vol. I., p. 630.

<sup>2</sup> Wood's first edition, a pamphlet of 66 pages, issued in 1824, contains but a slight reference to Woodhull. That of 1828 is a volume of 184 pages, and contains the account in this note.

honor, which forbid his abandoning the station assigned him, however perilous, before he was assured that relief was hopeless, or he had orders to that effect.

"A severe thunder shower, as is supposed, obliged him to take refuge in a public house, about two miles east of Jamaica; and before he left it he was overtaken by a detachment of the 17th regiment of British dragoons, and the 71st regiment of infantry, accompanied by some of the disaffected inhabitants as pilots.

8

"The General immediately on being discovered gave up his sword in token of surrender. The ruffian who first approached him, (said to be a Major Baird, of the 71st,) as reported, ordered him to say, 'God save the King'; the General replied 'God save us all', on which he most cowardly and cruelly assailed the defenceless General with his broad sword, and would have killed him on the spot, if he had not been prevented by the interference of an officer of more honor and humanity, (said to be Major de Lancey of the dragoons,) who arrested his savage violence.

"The General was badly wounded in the head, and one of his arms was mangled from the shoulder to the wrist. He was taken to Jamaica, where his wounds were dressed, and, with other prisoners, was detained there till the next day. He was then conveyed to Gravesend, and with about eighty other prisoners, was confined on board a vessel which had been employed to transport live stock for the use of the army, and was without accommodations for health or comfort. The General was released from the vessel on the remonstrance of an officer who had more humanity than his superiors, and removed to a house near the church in New Utrecht, where he was permitted to receive some attendance and medical assistance. A cut in the joint of the elbow rendered an amputation of the arm necessary. As soon as this was resolved on, the General sent for his wife with a request that she should bring with her all the money she had in her possession, and all she could procure; and he had it distributed among the American prisoners to alleviate their sufferings—thus furnishing a lesson of humanity to his enemies, and closing a useful life by an act of charity. He then suffered the amputation, which soon issued in a mortification that terminated his life September 20th, 1776, in the fifty-fourth year of his age."

Benjamin F. Thompson, in his "History of Long Island," (2 vols. 8vo, 2d edition, New York, 1843), also gives this same account,<sup>1</sup> taking it from Wood, to whom the first edition of his work, published in 1839, is dedicated. Thompson was also a blood relative of General Woodhull, his grandmother being a Woodhull, and a first cousin of the General, and hence able to know the facts from his family. No mention of

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<sup>1</sup> Vol. II., pp. 410, 411.

Woodhull is made in Gabriel Furman's "Notes on Brooklyn," published in 1824, nor in the edition combined with his "Antiquities of Long Island," issued in 1875, under the editorship of Mr. Frank Moore.

William Hunt, in his "American Biographical Sketch Book," published in 1848, gives another and a different account altogether, as follows, without stating his authority :

"On this day (28th) he dined at Jamaica with Mr. Hicks, Mayor of New York,<sup>1</sup> and then with one or two companions set out to join his troops. A shower of rain coming up, they took shelter at Carpenter's tavern, two miles east of Jamaica. While here a squadron of British dragoons and a party of infantry, piloted by a tory named John Cornwall, approached the tavern, when the inmates fled, and concealed themselves in a corn-field, and under the barn. Gen. Woodhull, with the hope of reaching his command, sprang for his horse, which was under the shed, and while in the act of unhitching the bridle, was taken by Lieut. Huzzy, of the dragoons. He immediately surrendered his sword; when this officer roughly commanded him to say 'God save the King.' The General replied 'God save us all.' On which this brutal Lieutenant cowardly and cruelly attacked him with his sword, severely wounding him in the head, and mangling one of his arms from the shoulder to the wrist, and would have slain his prisoner, had not another officer, said to have been Major De Lancey, arrested his savage violence."<sup>2</sup>

Henry G. Onderdonk, Jr., in his "Revolutionary Incidents of Queens County," published in 1846 (not a history, but a compilation of items mainly from colonial and other newspapers, placed in chronological order, not in their own language, but in that of the compiler), under the head of "Seizure of Whigs," gives this account of the capture, also without stating his authority :

"As the General came out of the house, took his horse from under the shed, and laid his hand on the reins, the light horse (guided, it is said, by one Smith, Livingston's ostler), galloped up, their swords gleaming in the lightning's red glare. The first salutation was, 'Surrender, you d——d rebel!' The General delivered his sword. 'Say God save the King,' they cried. His only reply was 'God save all

<sup>1</sup> Whitehead Hicks, who a few months later was appointed a Justice of the Supreme Court of the Colony.

<sup>2</sup> Hunt's "American Biographical Sketch Book," Vol. I., pp. 377, 378.

*honest men.' 'God save the King,' they again shouted, and showered their sabre blows on his devoted head, and arm, as it was uplifted to ward off the strokes."*<sup>1</sup>

He also gives, with a few words omitted, and a few others interpolated (and without any mention that it is so altered), Troup's statement, which is termed, very incorrectly, "his death-bed confession to a fellow prisoner."<sup>2</sup>

A friendly correspondence took place in the *Home Journal*, a newspaper of New York, in the early part of 1848, between Mr. James Fenimore Cooper, the novelist, Mr. Lorenzo Sabine, and Mr. Henry C. van Schaack, growing out of the publication in that year of the first edition of "Sabine's Loyalists." In that work, Mr. Sabine said, under the title, "De Lancey, Oliver, Junior," "There seems no room to doubt, that, when that unfortunate gentleman (Woodhull) surrendered to De Lancey, he stipulated for, and was promised protection; but that his Loyalist countryman basely struck him, and permitted his men to cut and hack him at pleasure,"<sup>3</sup> and he also made some mistakes about his family of a purely genealogical nature. In reply to Mr. Cooper's letter calling attention to this statement, and citing the Long Island writers, Wood and Thompson, against it, Mr. Sabine gave as his sole authority Onderdonk's "Incidents of Queens County," and Troup's statement as published therein.

Mr. Cooper, in answer, among other things, says :

"My wife was a daughter of the late John Peter De Lancey, of Mamaroneck, Westchester, and Elizabeth, daughter of Richard Floyd, of Mastick, Long Island. In consequence of this connexion, both General De Lancey<sup>4</sup> and General Woodhull were related to the De Lanceys of Mamaroneck. Oliver and John Peter De Lancey were not only brothers' sons, but they were brother soldiers. Both had been educated in Europe, and placed in the [regular] army

<sup>1</sup> This seems to be Mr. Onderdonk's own account, for it appears as not credited to any source. It is on p. 104 of the "Rev. Incidents of Queens County."

<sup>2</sup> *Ibid.*, page 106.

<sup>3</sup> *Sabine's Loyalists*, 1st ed., p. 254.

<sup>4</sup> Mr. Cooper here means by "General De Lancey" the Captain Oliver de Lancey in question, who subsequently became a full General in the British army.

young.<sup>1</sup> Oliver was the oldest and had the highest rank, but John Peter was a field officer in service in this country in 1777,<sup>2</sup> and was quite in a way to hear and know all the rumors of the camp. On the other hand, the Floyds and the Woodhulls were related by blood—how near I cannot now stop to ascertain—but General Woodhull himself married Ruth Floyd, a cousin-german of Richard Floyd of Mastick.

"I now distinctly remember a conversation, at Mamaroneck, which commenced by inquiries made by myself concerning General Woodhull, the affinity with him, &c. After conversing for some time, Mr. De Lancey, the Major De Lancey of 1777, it will be remembered, suddenly said:—'They endeavoured to put the death of General Woodhull on my cousin General De Lancey. Colonel Troup made an affidavit which Gouverneur Morris published. Troup and Morris are (both were then living) respectable men certainly—but Oliver always indignantly denied it.'

"My recollections of this conversation are now so distinct, that I do not believe I have changed half-a-dozen words in the foregoing quotation. It was something to be gained to be assured, on the testimony of one who must have known the fact, that the accused strenuously denied the truth of the charge. It showed there were two sides to the question, at least.

"It next occurred to me that the Manuscript history by Thomas Jones, of Fort Neck, ought certainly to make some allusion to this event. In order that the reader may appreciate his testimony it may be well to show who this historian was. Thomas Jones was a Judge of the Supreme Court of New York, under the crown, as indeed had been his father before him. He was the head of the very respectable family of Jones of Queens County, having succeeded to its largest and oldest estate, that of Fort Neck, which lies some fifteen or twenty miles (east) from the spot where General Woodhull was captured. The Jones family has now furnished legislators and jurists to the colony and State for more than a century. Judge David Jones, the father of Judge Thomas Jones, is better known to the Provincial history by his title of 'Mr. Speaker,' having filled that office, (in the Assembly of New York) then one of distinction, many years. A sister of Judge Thomas Jones was married to Richard Floyd, of Mastick, and he was then connected with General Woodhull. Whether any other affinity existed between them or not, I can not say, though I think it probable some distant connexion must,—as nearly all of the respectable old families of Long Island, particularly those of Queens and Suffolk, were more or less related. On the other hand, Judge

<sup>1</sup> Oliver, as Cornet, in 1766, and John Peter, as Ensign, in 1771. See Army Lists.

<sup>2</sup> In 1777 he was Major of the Pennsylvania Loyalists, of which William Allen was Colonel, though holding still his regular captaincy in the 18th Foot, with which he came to America in 1775.

Thomas Jones married Anne, a daughter of James De Lancey and a cousin german of Oliver, the party accused. It will be seen that, from connection, residence, and social position, the historian was every way fitted for his task. It was next to impossible that he should not have heard the story and its contradiction, and that undertaking to leave behind him a written account of the occurrences, he should have not used the means he possessed to learn the truth."

Mr. Cooper then gives the author's account in the text in full, which had been sent him at his request by his brother-in-law, the late Bishop de Lancey, who owned the manuscript.<sup>1</sup>

The editor of the *Home Journal*, in the paper of June 3d, 1848, thus alludes to these letters: "The more diversified the materials, the better the acute historian will be able to execute his task; and many points which are considered authentically established from printed works, may be disproved and corrected by hidden manuscripts of better authority. . . . We allude to the letters of Messrs. Cooper, Van Schaack, and Sabine, which have brought about the correction of erroneous impressions in the minds of each of the correspondents, but have finally resulted in the overthrow of printed history, by the evidence of tradition, confirmed by documentary manuscript."

Subsequently to this correspondence, Mr. Onderdonk criticised it in two letters to Mr. Cooper, and Mr. Cooper replied, but neither gave any new facts.<sup>2</sup> In May or June of the next year, 1849, was published Onderdonk's "Revolutionary Incidents of Suffolk County," in which the Woodhull matter is

<sup>1</sup> Letter of J. Fenimore Cooper to Lorenzo Sabine, in *Home Journal* of 6th May, 1848.

<sup>2</sup> The entire correspondence between Mr. Cooper and Mr. Van Schaack and Mr. Sabine, and Mr. Onderdonk and Mr. Cooper, appeared in the "Home Journal" newspaper, between the 12th of February and the 3d of June, 1848, on which date a correspondent (who is not known to the writer of this note), over the signature of *Vindex*, summed up the discussion in favor of Mr. Cooper. Subsequently, Mr. Onderdonk added a third letter, to the same paper, on July 18th, restating his views and criticism. The whole correspondence is reprinted in the *New York Historical Magazine*, First Series, Vol. V., pp. 140, 172, 204, and 229, from a copy preserved by the late Wm. J. Davis. Defective copies, made from newspaper cuttings, omitting several letters, and not mentioning that they are omitted, are in the N. Y. State Library, the Astor Library, and one or two other public libraries.

again mentioned, with some of the documentary evidence above given ; and on page 36 it is stated, " We insert all the notices of his capture and death we have met with, and leave the reader to form his own opinion." But, strange to say, the writer or compiler *omits entirely* Judge Jones's account given by Mr. Cooper in the above correspondence, in the year preceding, and all mention of the correspondence itself. Nor does either volume of the " Incidents " give more than four or five lines to Warne's testimony, nor is it stated in either, that it was brought out on an examination before the Committee of Safety ; and both omit Van Wyck's testimony altogether.

In the *New York Historical Magazine*, new series, Volume I., p. 380, under the heading of " Selections from Portfolios in various Libraries," is printed a letter from the collections of the Long Island Historical Society, written by Mr. Cooper to Mr. Onderdonk, dated October 30, 1849, in which this further statement is made by Mr. Cooper :

" As respects the death of Gen. Woodhull, a lady of his connection—a blood relative, indeed—has given me virtually the account of Judge Jones, she having been a contemporary, and a resident near Jamaica. She said that Woodhull attempted to escape, was cut up by the dragoons, and only saved from death on the spot by the interference of Oliver de Lancey. I have no doubt that this is the fact. I did not mention the name of this informant from an unwillingness to mix her up in such a discussion."

No further evidence up to this day, as far as the editor is aware, has been brought to light by any other writer on the subject.<sup>1</sup>

<sup>1</sup> As a singular illustration of the effect of alliances, and of the intermarriages of the old Long Island families, the following genealogical statement is given :

General Woodhull's only child, a daughter, *Elizabeth*, married Henry Nicoll ; they left a son, Edward H. Nicoll, who married Mary, a daughter of Solomon Townsend. The children of Edward H. Nicoll and Mary Townsend were two sons, Henry and Solomon T. Nicoll, the latter of whom married Charlotte A. Nicoll, of Shelter Island, a great-granddaughter of Richard Floyd of Mastick and Arabella Jones, through their daughter Anne. Her children are of course great-grandchildren of General Woodhull, and the Christian name of the eldest of them is *De Lancey*, called after the family of the writer of this note, who is a second cousin of their mother, and a great-grandson of Richard Floyd and Arabella Jones, of Mastick, through their daughter Elizabeth.

## NOTE L.

GENERAL SULLIVAN—HIS EXPEDITION AGAINST THE INDIANS OF WESTERN NEW YORK—HIS METHOD OF CONDUCTING IT—FROM NORRIS'S MS. JOURNAL.

*Vol. II., p. 332.*

THE following extracts from the manuscript journal of Major James Norris, of New Hampshire, an officer under Sullivan in his expedition against the Indians of Western New York, in 1779,<sup>1</sup> are of interest as showing the method of the conduct of that expedition, so strikingly described by the British Colonel Butler to the author, as like "the driving of a wedge into a stick of timber."

"July 31<sup>st</sup>, 1779. General Sullivan's Army at Wyoming consists of the troops following, viz. Maxwell's Brigade, consisting of Ogden's, Dayton's, Shrive's, and Spencer's Regiments; Poor's Brigade, consisting of Cilley's, Reed's, Scammel's, and Cortlandt's Regiment; Hand's Brigade, consisting of the German and Hubley's Regiment, Short's Corps, and Spalding's Company."

. . . . "We moved from Wyoming at 1 o'clock in the following order: Genl. Hand's Brigade a mile in front, to act as light troops; Genl. Maxwell's and Poor's, then the Pack Horses, about 1200 in number, followed by about 500 head of cattle; one Regiment for rear guard; 200 men as a flank guard on the right & 60 men on our left by the River. Col. Proctor's regiment of Artillery go by water with about 120 boats with provisions and stores. A Cap<sup>n</sup> and 60 men march on the opposite side of the river to scour the shore and prevent ambuscades being formed. We march'd about 10 miles and encamp'd near a stream called Lackawanack, which falls into the Susquehannah at this place."

"August 5. Our next place of encampment is Wyalusing,

<sup>1</sup> Now in the Library of the Buffalo Historical Society, to which, and to Mr. O. H. Marshall, the editor is indebted for its use.

distant 10 miles, the ground rocky and mountainous, particularly a tremendous ridge over which our right flank was obliged to pass, that seemed to overlook the world, & threaten annihilation to our prostrate troops. After leaving this place the scene opened into a fine, clear, extensive piece of woodland, here the Genl. apprehending an attack, the signal was beaten for the army to close column, this order of march was observed till we left this forest and gain'd the summit of a very lofty mountain, when another signal was given for marching in files. From the top of this height we had a grand prospective view of our little fleet coming up the river at about 3 miles distance. The green hills as far as the eye could reach rising like the seats of an amphitheatre, and the distance of the prospect gave the river and boats the beautiful resemblance of a miniature painting."

" August 12." (They marched all the night of the 12th and 13th to surprise the Indian town of Chemoung, about 15 miles from Tioga, but on arriving at dawn found it deserted.) " This seems to have been a pretty capital place. It consisted of about 40 Houses built chiefly with split & hewn timber, covered with bark and some other rough materials, without chimnies or floors ; there were two larger houses, which from some extraordinary rude Decorations we took to be the public buildings ; there was little furniture left in the Houses, except bear skins, some painted feathers, and Knick-Knacks. In what we supposed to be a chappel was found indeed an Idol, which might well enough be worship'd without a breach of the 2<sup>d</sup> commandment on account of its likeness to any thing either in heaven or earth. About sun down the Genl. gave orders for the Town to be Illuminated, & accordingly we had a glorious bonfire of upwards of 30 buildings." . . . . " Our next object was their fields of corn, about 40 acres of which we cut down and destroyed. In doing this business a party of Indians and Tories fired upon those Regiments across the river, killed one, and wounded five." . . . .

" August 19<sup>th</sup> . . . ." " Gen. Clinton joined us at 10 o'clock with Two thousand men including officers, Boatmen, &c. He has two Hundred and eight batteaus with Provisions ammuni-

tion &c."<sup>1</sup> . . . . " This evening the town of Owagea (Owego) was made a bonfire of to grace our meeting."

" August 25<sup>th</sup> . . . ." " We are to move to-morrow (from Tioga) without fail with seventy seven days flour and live beef. Our whole force that will march from here is about Two Thousand men, Officers included, with nine pieces of Artillery ; and three of the Onyda Warriors arrived here this afternoon who are going on with us as guides."

August 29. In the account of the battle of Newtown (now Elmira) fought this day he says : " Their works were very artfully mask'd with green bushes, so that I think the discovering them was as accidental as it was fortunate to us."

. . . . " we then advanced rapid with fix'd bayonets without firing a gun until we had gained the summit of the Hill, which was nearly half a mile, although they kept a steady fire on us all the while ; we then gave them a full volley which obliged them to take to their heels." . . . . " As we ascended the mountain Lieut. Case of our regiment Tomahawked one of the Indians, with the Indian's own Tomahawk, that was slightly wounded." . . . . " We found of the enemy on the field of action 11 Indian warriors dead, and one squaw, and one white man, and one negro, prisoners, from whom we learnt that Butler commanded here, that Brant had all the Indians that could be mustered in the five nations, that there was about 1,500 ; " . . . . " that their loss ' was very great, the most of which according to custom they carried off.' Our loss in General Poor's Brigade is killed 3, wounded 32, and in the rest of the army, killed none, wounded, 4 privates."

On the 2d of September they arrived at Catharine's Town, (now Havana) three miles from the head of Seneca Lake, consisting " of about 30 houses," destroyed it the next day, and on the 3d marched to the lake and down along its east bank nine miles. On the 4th they marched 12 miles down

<sup>1</sup> General James Clinton came from Albany via the Mohawk and over the portage to Otsego Lake, which he dammed at its outlet, the source of the Susquehanna, and when the lake was high enough, broke the dam and came down with the flood.

the lake, destroying "a small village" and "several fine fields of corn," about 4 miles from the starting place. On

September 5th, they marched five miles to Candia or Appletown, a place "of 20 houses very beautifully situated near the Lake," "where there is an old orchard of 60 trees and many other fruits." The 6th they proceeded three miles further down the lake and encamped, and saw across the lake a settlement, and Indians driving horses.

September 7th. "We took up our march at 7 o'clock proceeded 8 miles and came to the end (foot) of the Lake, where we expected the enemy would give us another battle, as they might have a very great advantage over us as we forded the outlet of the Lake.<sup>1</sup> When we arrived in sight of the ford we halted and several scouts were sent out to reconnoitre the adjacent wood. When we found the course was clear the army passed the ford, proceeded 3 miles by the end (foot) of the Lake, and found a small settlement;<sup>2</sup> we destroyed the village and proceeded 2 miles from the Lake, and arrived at a large town called Kannadasaga, which is considered as the capital of the Senecas, and is called the Senecas' Castle. It consists of about 40 Houses very irregularly situated, in the centre of which is the Ruins of a Stockade Fort and Block House. Here is a considerable number of apple trees and other fruit Trees, and a few acres of land covered with English grass. Their corn fields which are very large, are at some distance from the town. We found in this town a white child about three years old, which we suppose was a captive. In the Houses was left a number of things, some corn, and many of their curiosities."<sup>3</sup>

September 8th. "The Army lay still today. The Rifle-

<sup>1</sup> The present outlet at the northeast end of this Lake is artificial, having been made to aid the Cayuga and Seneca Canal. The natural outlet, now filled up, was nearly in the centre of the foot of the Lake. The author's distances, being all estimated, are about *one-third greater* than the true ones at this place.

<sup>2</sup> Where now is the village of Geneva.

<sup>3</sup> Kannadasaga, now called Seneca Castle, or the old Castle, lies north-west from Geneva, about one and a half miles. The mound in the centre of the Indian orchard is still to be seen, though most of the trees of the latter have lately been cut down.

men were sent to destroy a town about 8 miles from hence, on the west side of the Lake, call'd Gagsshongwa (now Cashong). We found a number of stacks of hay not far from this town which we set fire to. A scout of ours burnt a town to-day about 10 miles from this, N. East, on the road to the Kayuga Settlement, call'd Skaigus, or large falls."<sup>1</sup>

They then proceeded through Canandaigua, Honeoye, and Conesus to the Indian town at the Genesee River and Flats, the proposed end of the expedition, where they arrived on September 14th. "This is much the largest town we have met with; it consists of more than 100 Houses, is situate on an excellent piece of land in a large bend of the River; it appears that the savages left this town in a great hurry and confusion as they left large quantities of corn husk'd and some in heaps not husk'd, and many other signs of confusion.

"15<sup>th</sup>. At 6 o'clock the whole army was turned out to Destroy the Corn in and about this town which we found in great plenty. We were from 6 o'clock, to 2 o'clock P.M., in destroying the Corn and Houses. It is generally thought we have destroyed 20,000 Bushels of Corn at this place. The Method we took to destroy it was, to make large fires with parts of Houses and other wood, and then piling the corn on the fire, which effectually destroyed the whole of it."

The army returned to Easton precisely the way it went, sending out, however, from Kannadasaga (Geneva) on the return, three detachments, one of 100 men under Col. Gansevoort, to the Mohawk, and thence to go to Albany, one of 500 under Col. Butler, to pass down the east side of Cayuga Lake, and one of 200 under Col. Dearborn, to pass down the west side of the same lake, burning every house and corn-field. The two latter joined the main body on the Susquehannah, and the whole arrived at Easton on October 15th, under which date the journal says: "The army has march'd from Tioga to Easton (150 miles through a mountainous rough wilderness) in 8 days with the Artillery and Baggage, a most extraordinary march indeed."

<sup>1</sup> The present town of Seneca Falls.

## NOTE LI.

COL. JAMES HOLMES—HIS OWN STATEMENT OF THE FACTS  
OF HIS CAREER.

*Vol. II., p. 334.*

COLONEL JAMES HOLMES was not from Newcastle, as the text states, but from the adjoining town of Bedford. The following is a reprint of a brief, privately printed pamphlet, issued in 1815, giving his own account of his life, written by a friend, but who, is not known. He married Miss Tamar Lounsbury, of Longridge, Connecticut, who died at St. John's, Canada, on October the 11th, 1788, leaving him with two daughters, to one of whom, who died at a great age as late as 1876, he gave the identical copy of the pamphlet from which this reprint is made, and for the use of which the editor is indebted to his grandson, a well-known lawyer of the city of New York.

A SHORT ACCOUNT  
OF THE DESCENT AND LIFE OF  
*James Holmes, Esq.*

*Communicated by himself, for the benefit of his two daughters, and  
their descendants, and committed to writing by a friend.*

He was the son of John and Jemima Holmes, at Bedford, in the county of Westchester, and Province of New York, born in the year 1737. His father, John Holmes, was a respectable farmer; a man of extensive real and personal property, a large proportion of which descended to him from his father John Holmes, who emigrated to this country from Beverly, Yorkshire, in England, about the year 1660, and was one of the original proprietors and settlers in the town of Bedford. John Holmes, father of the said James Holmes, held many civil and military appointments: he was many years a Town Clerk, Justice of the Peace, and Captain of the Militia; which

appointments he held till the time of his death. With his father he had been instructed to believe in the principles and doctrines of the Church of England ; but the number of Episcopalian at Bedford, at this early age, being too small for the establishment and support of any regular society, he became, before his death, a member and elder of the Presbyterian order, and continued as such till his death, which took place in the year 1763, by the small pox.

The information which the said James Holmes has regarding the life and standing in society of his grandfather, John Holmes, is quite limited ; he having died, although at an advanced age, still many years since. But in respect to his father, John Holmes, he can with assurance observe, that no man sustained a fairer character.

The said James Holmes received a common school education at Bedford, and lived with his parents till the year 1757. A war then existing between France and Great Britain, he volunteered in the service of his country, and went against Canada. Nothing very material occurred during the first year. In the year 1758 he received enlisting orders, and the commission of a Lieutenancy, and proceeded to the place of rendezvous, at the south end of Lake George, and soon advanced to Ticonderoga, and was in that great and destructive battle, under the command of Gen. Abercrombie, in which were nineteen hundred men killed and wounded. In the year 1759 he received a Captain's commission from the Governor of the Province of New York, and proceeded to Oswego, under the command of Gen. Haldiman. The main army proceeded to Niagara, and he was left, with about 900 men, at Oswego. They were attacked the third day after, by about 1700 men, French and Indians, who had crossed over from what is now called Kingston. Breast works were hove up on a sudden ; a battle ensued ; the enemy were repulsed. He was then ordered to take the charge of a number of boats, in transporting supplies to the army at Niagara : they encountered a severe gale : most of the supplies were lost. The third day after their arrival a reinforcement to relieve the garrison arrived from Detroit : they made an attack, but the whole of them were killed, wounded, or taken. On the afternoon of the same day the garrison capitulated to the British arms. In consequence of his good services in superintending the construction of a fort at Oswego, an addition of 5 shillings sterling per day was made to his pay.

From thence, in the year 1760, he proceeded with the army down the river St. Lawrence to Montreal. In passing the rapids a number of boats and about 500 men were lost. The conquest of Canada was now completed, and the campaign ended. He then returned to Bedford. His time and attention was devoted to agricultural pursuits, till the commencement of the revolutionary war. From the close of the French war, so-called, to the commencement of hostilities between America and Great Britain, he was honored with many civil and military offices.—He was an assistant Justice of the Peace for many years ; also Lieut. Colonel of

the middle battalion of the Westchester County Militia. In the year 1775 he was a member of the New York Convention, assembled for the purpose, (with other views,) of devising means for the most effectual resistance to the claims of Great Britain. While at, and by, this convention, he was appointed one of a Committee of three, viz. Col. James Van Cortland, Capt. Montgomery, (late Gen. Montgomery,) and himself; to proceed to examine the heights about Kingsbridge, and report where it would be advisable to fortify.—They performed this duty and reported satisfactorily. At this Convention four regiments were ordered to be raised, and the command of the first regiment was given to Alexander McDougal, of the second to Goose Van Schaick, of the third to James Clinton, and the fourth to James Holmes.<sup>1</sup> These regiments were raised, and advanced to the northward. The others proceeded into Canada. He was stationed at Ticonderoga, under the command of Gen. Schuyler, and notwithstanding it was particularly requested by Gen. Montgomery, that the regiment under the command of the said James Holmes might advance to aid in the operations in Canada, still he was detained at Ticonderoga. This conduct in Gen. Schuyler arose, as the said James Holmes has ever believed, from a desire to withhold from him an opportunity of distinguishing himself as a military commander. About this time there was also a resolve of Congress, (which resolve was published in General Orders,) requesting the commanding officer of the northern department to know of the officers of that department who wished to continue in the service, and who wished to retire; in order that those who had served to the satisfaction of Gen. Schuyler might be promoted. The said James Holmes being unwilling to submit his fate to a man whose conduct had tended to dampen his military ambition, and being also by this time convinced that independence was the object for which the Americans were contending (to which in principle he was opposed,) he retired from the service, returned to his former occupation, and publicly declared his disinclination to fight for independence. He continued in the business of farming till 1778. In the spring of that year he was at the house of Barto Underhill, with a negro boy, a servant, and two valuable horses—about eight miles from Bedford, and twenty from the British lines—quiet in the house, and the horses in the stable. The house was surrounded by a troop of horse, commanded by Jonathan Paulding. The house was entered—he was made prisoner and taken to Bedford. By order of the Committee, of which General Thomas was one, he was searched, and all his money, his horses and negro servant, were taken. He was then ordered to the guard-house and put under the charge of a captain's company. He soon made an escape, from the severe treatment he

<sup>1</sup> The officers of the Fourth or "Dutchess Regiment" were, *James Holmes*, Colonel, *Philip Van Cortlandt*, Lieutenant-Colonel, and *Barnabas Tuthill*, Major. N. Y. Rev. Papers, Vol. I., p. 117. All were appointed 30th June, 1775. Ibid. 108, Vol. II., p. 41.—*Ed.*

received, and went within the British lines, where he remained about a month, and then went to the south part of Long-Island, where he remained inactive till the year 1779; then hearing that his brother at Bedford had died, he repaired within the American lines, and put himself in the power of the American army, and, by order of Gov. Clinton, was escorted to the jail in Poughkeepsie, and put into close confinement, and there continued till July 1780. He then made an escape, was betrayed in about five days, and committed to the dungeon, where he remained thirteen weeks; was then let out of the dungeon, but continued in prison till July, 1781, during which time he was not admitted to bail, notwithstanding ample security was offered.—He then made his escape again, and went within the British lines. During his confinement his estate was confiscated. He was now destitute of property, and having no means of subsistence, he accepted the appointment of Lieut. Colonel of the corps of Westchester county refugees. He remained in this corps till the end of the war, without anything very particular occurring. All his property being confiscated, he laid his claim before the Commissioners at Montreal, in the year 1787. Mr. Pemberton, one of the Commissioners, informed him he had proved his loyalty, and observed the evidence he had exhibited in support of his claim was sufficient; that it would be necessary to move into Canada to procure and settle his lands, and when done and properly certified, his claim would be reported. He accordingly moved to Canada, and there continued till the year 1792. In consequence of ill health, and inability to endure the rigors of so northern a climate, he was advised to remove to a more southern region, and departed from Canada.

In the year 1793, the said James Holmes found it necessary to go to England to support his claim on the British government for his military services.—This became necessary in consequence of the inattention of his agent in England in his interest. Accordingly, in November in that year, he sailed from New York. Having arrived in England, without meeting with any difficulty, he succeeded in obtaining his back pay, and also in being placed on the military establishment as a reduced Lieutenant Colonel; and he returned to America in the year 1794.

*City of New-Haven, June 16, 1815.*

Colonel Holmes, after the war, continued to live at Bedford, and married his wife at Longridge, a few miles from Bedford, in 1785. On his return from England in 1794, then a widower, he made Bedford again his home, and resided there in the family of Colonel Jesse Holly, the husband of his niece, the daughter of his brother, John Holmes, until about 1810, when he removed to New Haven, Connecticut, where he dwelt until his death on July 8, 1824, at the age of 87 years. He is buried in the cemetery of that city.<sup>1</sup>

<sup>1</sup> Communicated by the grandson of Col. Holmes.

## NOTE LII.

## SKETCHES OF ISAAC SEARS, "KING SEARS"—AND GENERAL JOHN LAMB.

*Vol. II., p. 340.*

IN connection with the author's character of Isaac Sears, compare the papers and documents in notes XXV., XXVII., and XXVIII., of the first volume relating to him.

The author's statement that Lamb violated his parole given to Carleton at Quebec in August, 1776, though believed at the time, it is probably a mistake. The facts and circumstances relative to the exchanges of prisoners during the revolution have not been known generally till within a few years, and much information on this subject is still desirable. Lamb memorialized Congress in the autumn of 1776, to be included in the next exchange of prisoners, and on November 29, 1776, a resolution passed directing Washington to include him.<sup>1</sup> On the 2d of January, 1777, about a month later, General Knox wrote Lamb, "Gen. Howe has consented to your exchange, and sent out the parole which you gave Gen. Carleton.<sup>2</sup> Whom he was exchanged for, and when, otherwise than as here stated, is not known. Lamb was one of the bitterest of the opponents and oppressors of the loyalists after the war, having invested all his depreciated debt certificates in the purchase of forfeited lands as a speculation, the rise of which later gave him all the property he ever possessed.<sup>3</sup> He was first appointed Collector of New York under the State Government immediately after the peace. On the formation of the United States Government in 1789, he was appointed by Washington to the same office. Nothing is said by his biographer, Isaac Q. Leake, of the mission to Algiers mentioned in the text.

<sup>1</sup> Journals Congress, 1776, p. 484.

<sup>2</sup> Letter in Life of Lamb, pp. 148, 149.

<sup>3</sup> Ibid., 298.

Lamb died in 1800, not long after all his property had been seized and sold by the Government in consequence of his liability for the deficiency of a Custom House clerk. In their latter years, his daughter, Mrs. Charles Tillinghast, and her children, a son, who was many years State Librarian of New York, and Librarian of the Law Institute of the City of New York, and two maiden daughters, were well known to the writer of this note. Mrs. Tillinghast and her daughters resided in Western New York, where one of the latter is still living in her 87th year. They never recovered from their father's loss of property; and their comfort, for very many years was, and that of the survivor still is, provided for at the charge of friends, who were, strange to say, the relatives of one of the very loyalists whom General Lamb so violently opposed, and whose estate he was active in having sold, and the descendants of another.

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#### N O T E L I I I .

NOTICE OF WASHINGTON—THE DEATH OF DE JUMONVILLE  
— THE THREE OFFICIAL ACCOUNTS — THE FRENCH,  
THE ENGLISH, AND THE INDIAN — THE TERMS OF THE  
CAPITULATION OF FORT NECESSITY.

*Vol. II., p. 344.*

THE different official versions of the de Jumonville affair referred to in the text, are as follows :

The despatch of M. de Contrecoeur, the commander at Fort Du Quesne, to the Marquis Du Quesne, the Governor of Canada, dated June 2, 1754, says :

"A Canadian belonging to the party, named Monceau, made his escape, who relates that they had built cabins in a low bottom, where they lay during a heavy rain. At seven in the morning they saw themselves encircled on one side by the English, and by the

savages on the other. Two discharges of musketry were fired upon them by the English, but none by the savages. M. de Jumonville called to them by an interpreter to desist, as he had something to say to them. The firing ceased. M. de Jumonville caused the summons to be read which I had sent, admonishing them to retire, a copy of which I have the honor to enclose. While this was reading the said Monceau saw the French gathered close around M. de Jumonville in the midst of the English and the savages." . . . . "I have this moment received a letter from M. de Chanvignerie, which I have the honor to send you herewith, from which you will see that we have certainly lost eight men, of whom M. de Jumonville is one. The savages who were present say that M. de Jumonville was killed by a musket-shot in the head while he was listening to the reading of the summons, and that the English would immediately have destroyed the whole party, if the savages had not rushed in before them and prevented their attempt. M. Drouillon and M. de la Force were made prisoners. We are not informed whether M. de Boucherville and M. du Sablé, two cadets, are among the slain. Such is the account which we have received from the savages.<sup>1</sup>

This is the foundation of all the French accounts, and of the English versions based upon them, of this affair; one of the latter, that of Wynne,<sup>2</sup> published in 1770, is quoted by the author as his authority, in a note on page 345 of the text.

Washington's own account occurs in a long letter to Governor Dinwiddie, dated, "Camp at the Great Meadows, 29 May, 1754," (occupying ten pages of Sparks's Writings of Washington, Vol. II., pp. 27-37) chiefly about the pay of himself and the other officers; they claimed British pay, while the Virginia authorities only wished to allow them Virginia pay, which was about twenty-five per cent. less. In this letter, after stating his night march with 40 men through the rain to the Half-King's camp (Tanacharison, the noted Seneca chief) he says, "When we came to the Half-King, I counselled with him and got his assent to go hand-in-hand and strike the French. Accordingly he, Monacawacha, and a few other Indians set out with us; and when we came to the place where the tracks were, the Half-King and Monacawacha formed a disposition to attack them on all sides, which we accordingly did, and after an engagement of about fifteen minutes, we killed ten, wounded one, and took twenty-one prisoners. Amongst those killed was M. de Jumonville, the Commander. The principal officers taken are M. Drouillon and M. de la Force, of whom your Honor has often heard me speak as a bold, enterprising man, and a person of great subtlety and cunning. With these are two cadets." This is his whole account of the fight.

<sup>1</sup> From the letter printed by the French Government in the "Memoire" it published on this subject, as translated in Sparks's Writings of Washington, Vol. II., p. 450.

<sup>2</sup> Wynne's British Empire in America, Vol 2., p. 26.

He then says, "These officers pretend they were coming on an embassy," and gives his reasons at length for believing it a mere pretext, and "that they were sent as spies rather than anything else," wherefore he detained them as prisoners.

Of course, when he made the attack, he could not know that they claimed to be ambassadors.

The Indian account was given at a council with the Indians at Philadelphia, in December, 1754,<sup>1</sup> when "Scarroyaddy," their leader, pointedly dwelt on the efforts Jumonville had previously made to seduce him from the English (whom he was on the way to join), and how he rewarded these insidious overtures by at once informing Washington of their whereabouts, and aiding in the combat by way, as he told Washington, of "a little bloodying the edge of the hatchet." John Davison, the interpreter, who was also in the battle, added, there were but eight Indians who did the most of the execution that was done. Col. Washington and the Half-King differed much in judgment, and on the Colonel's refusing to take his advice, the English and Indians separated. Afterwards the Indians discovered the French in a hollow, and hid themselves, lying on their bellies behind a hill; afterwards they discovered Col. Washington on the opposite side of the hollow in the gray of the morning, and when the English fired, which they did in great confusion, the Indians came out of their cover and closed with the French, and killed them with their tomahawks, on which the French surrendered.

Adam Stephen, of Virginia, who served with distinction under Braddock and in the war of the Revolution, gives a contemporaneous and interesting notice of this skirmish, which seems to have escaped the notice of the historian. On May 10th Capt. Stephen was detached with a reconnoitering party towards Fort Du Quesne, whence, his vicinity being discovered, Jumonville was dispatched against him. Stephen fell back before his superior foe till he rejoined Washington, who, at 11 o'clock at night, through a heavily pouring rain, went forth with forty men to the attack. The French were lodged in bark cabins about five miles from Washington's position; but so dark was the night, and so bewildering the storm, that it was not till the next morning that they drew near the enemy. Here it was found not only that seven men were lost on the journey, but that their pieces and ammunition were so wet as to be in a measure useless. They therefore charged the French with fixed bayonets, receiving their fire as they advanced, and not returning it till they were at close quarters. Stephen adds, that three Indian men and two boys came up with the English during the battle; and that he himself

<sup>1</sup> This account and Stephen's, which follows, are taken from the notes to Winthrop Sargent's History of Braddock's Expedition, Vol. V. of the Memoirs of the Pennsylvania Historical Society, pp. 45 and 46. Sargent's own account of this Jumonville affair in the above able work is one of the best, if not the very best that has been written.

made the first prisoner, capturing the Ensign, M. Drouillon, 'a pert fellow.'—*Penn. Gazette*, No. 1343." These are, it is believed, all the contemporaneous accounts of the De Jumonville affair. It was the first time Washington was under fire, and his first act of war.

Washington capitulated at Fort Necessity on July 3, 1754, at 8 o'clock at night, and surrendered possession to the French under De Villier, the brother-in-law of De Jumonville, on the morning of the 4th, at break of day. The preamble of the capitulation runs thus: "As our intentions have never been to trouble the peace and good harmony which reigns between the two Princes in amity, but only to revenge the assassination which has been done on one of our officers, bearer of a citation, as appears by his writing, as also to hinder any establishment on the lands of the Dominion of the King, my master, upon these considerations we are willing to grant protection or favor to all the English that are in said fort, upon the conditions hereinafter mentioned." Then follow seven articles, the sixth of which provides that the English may place their effects "*en cache*," and have them guarded, until they can get horses to carry them away, "upon condition that they will give their word of honor not to work upon any building in this place, or any fort this side of the mountain during a year, to be accounted from this day." And the seventh provides that, "as the English have in their power an officer, and two cadets, and most of the prisoners made in the assassination of the Sieur de Jumonville," that they will send them back to Fort Du Quesne, and that Captains Jacob Van Braam and Robert Stobo shall be given as hostages for their safe arrival, "and for surety of this article as well as of this treaty."<sup>1</sup> It will thus be seen that Washington's parole "was not to bear arms against France for twelve months," as the author states, but not to work upon any fort west of the mountains for twelve months. The author, however, was not alone in the error as to the terms. Walpole also says, "The French have tied up the hands of an excellent fanfaron,

<sup>1</sup> Pennsylvania Archives, Vol. II., pp. 146, 147, where the capitulation in full in English is given. The copy in French given by Sparks, Vol. II., p. 459, omits the preamble.

a Major Washington, whom they took and engaged not to serve for a year."<sup>1</sup> The author errs in stating August, 1754, as the date of the surrender, instead of July, 1754, which deprives his remark of its force. The news did not reach England till August, and the publications there on the subject were in August, 1754. The author has confounded the date of the event with the date of the papers treating of it.

Washington himself wrote a gentleman, who, many years after these events, had sent him a translation of the French accounts of the surrender, a long letter, in which he says: "That we were wilfully or ignorantly deceived by our interpreter in regard to the word *assassination*, I do aver, and will to my dying moment; so will every officer that was present. The interpreter<sup>2</sup> was a Dutchman, little acquainted with the English tongue, therefore might not advert to the tone and meaning of the word in English; but whatever his motives, certain it is, he called it the *death*, or the *loss* of the Sieur Jumonville. So we received and so we understood it, until, to our great surprise and mortification, we found it otherwise in a literal translation."<sup>3</sup>

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#### NOTE LIV.

##### THE EMIGRATION AND CAREER OF FRANCIS LEWIS.

*Vol. II., p. 357.*

AMONG the manuscripts in the Library of the New York Historical Society is one endorsed "Annely v. Lewis, Instructions to draw Bill," which mentions incidentally how Francis Lewis came to America and who he was. It appears

<sup>1</sup> Walpole's Correspondence, Vol. V., p. 72.

<sup>2</sup> Jacob Van Braam.

<sup>3</sup> See the Letter in Sparks, Vol. II., p. 464. The name of Washington's correspondent is not given, nor the date of the letter here quoted.

from this document, that Richard Annely, one of a large family of Bristol tradespeople, came to New York with a venture of goods, advanced him by Bristol merchants, in 1734; that proving successful in business, some of his consignors in Bristol urged him, in 1739, to take Lewis, then a shopman, at £15 a year in the linen draper's establishment of one Sydenham Shipway, to New York with him as a partner, and Annely did so. The date of 1746, mentioned in the text as the time of his coming, is therefore incorrect. In 1743, Richard Annely died, and subsequently, in 1747, a brother, Edward Annely, a gunsmith and engraver of Bristol, came to New York to obtain a settlement of Richard Annely's estate, and established himself there in his own trade. Difficulties arose between him and Lewis, and advertisements against each other appeared in the *New York Gazette and Weekly Post Boy* between July 25, 1748, and September 6, 1749.<sup>1</sup> Subsequently to these advertisements, as appears from the document itself, the manuscript above mentioned was proposed as "Instructions" for counsel to prepare a bill in a lawsuit. Who the counsel was for whom it was written is not known, but as the manuscript is one of the Kempe papers, it was probably William, or John Tabor, Kempe, father and son, who were successively Attorneys-General of the Province of New York. Besides giving information about Lewis, it is of interest for its mention of prominent men of New York at that day. It is here printed precisely as written :

"I was born in y<sup>e</sup>. City of Bristol & lived there till I was 45 years of Age & had a Younger Bro<sup>r</sup>, who follow'd y<sup>e</sup> buisness of Merchandiseing in New York &c. And on Sep. y<sup>e</sup>. 6. 1743 he Died at Whitestone in y<sup>e</sup>. Township of Flushing Queens County in Nassau Island, after w<sup>e</sup>b. his Partner in Merch<sup>e</sup>. one Francis Lewis sent a letter to our Family acquainting Us y<sup>t</sup>. our Bro<sup>r</sup>. Richard Annely Died Sep. 6. 1743, & y<sup>t</sup>. he made a Will & left all he had to his Sister Elizabeth, except one Legasey to his housekeeper Hanah Board of one of his Estates at Whitestone, but y<sup>t</sup>. he should take care & sell it & y<sup>t</sup>. she should be never y<sup>e</sup>.

<sup>1</sup> These will be found in numbers 299, 313, 315, 316, and 355 of the "Gazette and Post Boy." Numbers 315 and 355 are Mr. Lewis's statements, to which the reader is referred, and the others are Annely's.

better for itt. Some time after our above Sister Elizabeth (who was w<sup>th</sup>. my bro<sup>r</sup>. Richard w<sup>a</sup>. he Died) writ our family a Letter to acquaint us y<sup>t</sup>. our Bro<sup>r</sup>. Rich<sup>d</sup>. was dead, & had made a Will & left all he had to her, except one Legasey to our bro<sup>r</sup>. Tho<sup>s</sup>. of his mojetey of thair house in New York.

" Now as Francis Lewis & our Sister Elizabeth by thair Letters was w<sup>th</sup>. our bro<sup>r</sup>. R<sup>d</sup>. w<sup>a</sup>. he Died they could not be Ignorant of his Will if he made any, & as thair Acct. differed in such a Material Point, I could not but think y<sup>t</sup>. there was some fraud Intended And as I being y<sup>t</sup>. Elder Bro<sup>r</sup>. & heir at Law to my bro<sup>r</sup>. Richard who died a Batchelor, I sent to y<sup>t</sup>. s<sup>d</sup>. Fra<sup>s</sup>. Lewis for a Just Acc<sup>t</sup>. of this Affair but receiving none y<sup>t</sup>. was satisfactory, in y<sup>t</sup> Year 1747 I came here w<sup>th</sup>. my family & requireing of s<sup>d</sup>. Fra<sup>s</sup>. Lewis an Acc<sup>t</sup>. of my Deceased Bro<sup>r</sup>. estate he refused to Give Me any. On w<sup>th</sup>. I searched y<sup>t</sup> Secretar<sup>y</sup>'s. Office to see if My Bro<sup>r</sup>. made any Will or who Adm<sup>d</sup>. to his Estate, And I found Register'd an Adm<sup>a</sup>. Bond given by Fra<sup>s</sup>. Lewis & Abraham Lodge Atty. as his Security to adm<sup>r</sup>. y<sup>t</sup> Estate of y<sup>t</sup>. above R<sup>d</sup>. Annely, dated Sep. 8<sup>th</sup>. 1743 two Days after My Bro<sup>r</sup>. Decease. This Bond Expressed y<sup>t</sup>. Adm<sup>a</sup>. was granted to Francis Lewis dewring y<sup>t</sup>. absence of y<sup>t</sup> next of Kin, but no Letters of Adm<sup>a</sup>. to F. Lewis was in y<sup>t</sup> Register, Yet a littel after this, viz on Sep. 12. 1743 the s<sup>d</sup>. Fra<sup>s</sup>. Lewis Exhibited in y<sup>t</sup>. S<sup>d</sup>. Office a Non cubitive<sup>1</sup> Will of y<sup>t</sup> above R<sup>d</sup>. Annelys, to w<sup>th</sup>. he was y<sup>t</sup> only Witness to some of y<sup>t</sup> Legaseys & he & one John West to Other Some, w<sup>th</sup>. being not according to Law was Rejected. Some time after this on Searching y<sup>t</sup> Rejester again I found y<sup>t</sup>. in April 1744 Letters of Adm<sup>a</sup>. to y<sup>t</sup>. Estate of y<sup>t</sup>. above R<sup>d</sup>. Annely was grant<sup>d</sup> to y<sup>t</sup> Above Elizabeth Annely, w<sup>th</sup>. out any Day of y<sup>t</sup> Month or Bond given or y<sup>t</sup>. Other Letters repealed. This as after Appear'd was contrived & procured w<sup>th</sup>. this fraudulent Intent, y<sup>t</sup>. if any of y<sup>t</sup>. Creditors &c. of R<sup>d</sup>. Annely should sue Francis Lewis as Adm<sup>r</sup>., Letters would be produced in Court of Adm<sup>r</sup>. granted to Eliz. Annely & so defeat thair Action, & if they Sued Eliz<sup>t</sup>. Annely y<sup>t</sup>. Letters granted to Fr. Lewis would be produced &c.

The s<sup>d</sup>. F. Lewis wrote Me w<sup>n</sup>. in England y<sup>t</sup>. my bro<sup>r</sup>. R<sup>d</sup>. Estate at White-stone was sold by Execution at y<sup>t</sup>. Suite of y<sup>t</sup>. Exe<sup>r</sup>, of Mr. Stephen DeLancey<sup>2</sup> for a bond Debt of £600, My Sister Eliz. wrot me y<sup>t</sup>. it was sold by an Execution for £1100, on my Arrival here waiteing on M<sup>r</sup>. James DeLancey Eldest son<sup>3</sup> of Stephen DeLancey who was deceased, I asked him if he knew of any such sute against My bro<sup>r</sup>. Estate & he told me he did not. On this I enquired at y<sup>t</sup>. Secretareys Office if any of this process was on record, but could not find y<sup>t</sup>. there was, only a pease of paper in y<sup>t</sup>. forme of a Declaration Declaring y<sup>t</sup>. an Action was served on Eliz. Annely as Adm<sup>r</sup>. to y<sup>t</sup> above Estate of R<sup>d</sup>. Annelys, & yet she by Her Attorney y<sup>t</sup>. above Abraham Lodge (who was bound for F. Lewis's Adm<sup>r</sup>. y<sup>t</sup>. s<sup>d</sup>. Estate) Confessed Judgment to y<sup>t</sup>. Action in y<sup>t</sup> Term of April 1744. This being all the Information I could gett here I apply'd to y<sup>t</sup>. Sheriff of y<sup>t</sup>. County one Adam Laurance, And he Acquainted me y<sup>t</sup>. F. Lewis & M<sup>r</sup>. Nickols Postmaster came & brought him an Execution for £1100 against y<sup>t</sup>. Estate of R<sup>d</sup>. Annely, & y<sup>t</sup>. whether it was a good one or not he could not

<sup>1</sup> Nuncupative.

<sup>2</sup> The first in America of that family.

<sup>3</sup> The Chief Justice of New York.

tell, but it was such a one as he thought he must Serve, And y<sup>t</sup>. they Asked him w<sup>t</sup>. he would have to Serve him, & he Said w<sup>t</sup>. y<sup>t</sup> Law Allowed him, but they replied y<sup>t</sup>. unless he would serve him for £20, they would not have him served at all, on w<sup>t</sup>. he, considering y<sup>t</sup>. half a loaf was better y<sup>t</sup>. no Bread at all, agreed to it, & seez'd both y<sup>t</sup>. real & personal Estate of R<sup>t</sup>. Annelys att Whitestone, & put y<sup>t</sup>. Up & Sold y<sup>t</sup>. at Vandue. F. Lewis bought y<sup>t</sup>. real & part of y<sup>t</sup>. personal Estate, & Abraham Lodge drew y<sup>t</sup>. Wrightings to convey y<sup>t</sup>. real Estate to him, & Lewis has charged y<sup>t</sup>. Estate w<sup>t</sup>. his assisting at this Sale. But Lewis w<sup>t</sup>. y<sup>t</sup>. Estate was Ejected never offer'd to make Use of this his Purchase.

In March 1749, I served Leases of Ejectment against this Estate & Lewis lett it goe by default in July Term following & Employed y<sup>t</sup> above Abraham Lodge to sue him & his Wife as Adam<sup>t</sup>. & Adam<sup>s</sup>. for 3 bond Debts y<sup>t</sup>. R<sup>t</sup>. Annely had enagied in, one of y<sup>t</sup>. was y<sup>t</sup>. above Bond Debt of R. Annely & Abraham Huisman to M<sup>t</sup>. Stephen De Lancey for £600, w<sup>t</sup>. Debt he had before this viz <sup>1</sup> in y<sup>t</sup> Gazette advertised he had paid it to y<sup>t</sup> above Nichols, & afterwards Swore in part of an Inventory he Exhibited in y<sup>t</sup> Secretary's Office, y<sup>t</sup>. R<sup>t</sup>. Annely at y<sup>t</sup> time of his Decease owed Stephen De Lancey on this bond but £200, an Other of y<sup>t</sup>. Bonds was for £107 to one M'farlon signed R<sup>t</sup>. Annely & Ab<sup>t</sup>: Huisman, w<sup>t</sup>. Bond was paid of near 3 years before as M'farlon deccleared before several witnesses, y<sup>t</sup>. Other bond was for £250 given to one M<sup>t</sup>. Smith (& unpaid) & sign'd by R. Annely F<sup>t</sup>. Lewis & Abraham Huisman, F. Lewis meting M<sup>t</sup>. Smith<sup>2</sup> in y<sup>t</sup> Street asked him to lett him make Use of his Name in a Dispute against M<sup>t</sup>. Annely, & he told him he might w<sup>t</sup>. out knowing w<sup>t</sup>. y<sup>t</sup>. dispute was as he deccleared to me, And at y<sup>t</sup>. Same time Employ'd M<sup>t</sup>. Murray<sup>3</sup> to Confess Judgment for y<sup>t</sup>. to these 3 Actions, & Immediately took out 3 Executions & gave y<sup>t</sup>. to Uanwick<sup>4</sup> to y<sup>t</sup>. Sheriff of Queens County, to seaze y<sup>t</sup>. Estates of y<sup>t</sup>. above R. Annely at Whitestone, y<sup>t</sup>. w<sup>t</sup>. he Did & Advertized y<sup>t</sup>. to be Sold Sep. 12. 1749, at Uandue. It was Sep. 11 before I could gett my Attorney M<sup>t</sup>. Smith to give Me a Writ of Possession & y<sup>t</sup>. Next Morning I gave him to y<sup>t</sup> Sheriff, & he promised to put Me in Possession after breakfast. About 11 a Clock he came to a Neigbour's house Joyning on to y<sup>t</sup>. Estate, & I went to him & required him to put me in Possession, & he Absolutely refused to doe itt & told me he would sell y<sup>t</sup>. Estates, but after adjurned y<sup>t</sup> sale for 14 Days. In y<sup>t</sup>. Mean time y<sup>t</sup> Cheaf Judge told him he must Execute my Writ of Possession. The Morning y<sup>t</sup> 14 Days was Up they sent y<sup>t</sup> under Sheriff & arrested me for a Debt y<sup>t</sup>. by agreement was not yet Due, in order y<sup>t</sup> I might not Insist to be put in Possession or hinder y<sup>t</sup> sale of y<sup>t</sup>. Estate; however I gott y<sup>t</sup>. under Sheriff to goe w<sup>t</sup>. me to y<sup>t</sup>. high Sheriff who was Just a going to sell y<sup>t</sup>. Estate. I asked him if he would goe & putt me in Possession & y<sup>t</sup>. I would give Bail to y<sup>t</sup> Action, but he refused to do itt, on w<sup>t</sup>. I told him y<sup>t</sup>. w<sup>t</sup>. soever Damage I receved by his refusing to do his Duty I would sue him for itt, but he bid me defiance & told me that M<sup>t</sup>. Lewis had given him a bond of £4000 to Indemnify

<sup>1</sup>This blank is in the original.

<sup>2</sup>William Smith, the elder.

<sup>3</sup>Joseph Murray, a distinguished lawyer.

<sup>4</sup>Van Wyck.

him against any Sute I should commence against him on this affair; & I replied y<sup>t</sup>. such Bonds was Void in Law, & y<sup>t</sup>. he knew Lewis to be a Knave &c. w<sup>t</sup>. very much Staggered him, & y<sup>a</sup>. he told me y<sup>t</sup>. he would meet me in Jamaco<sup>1</sup> & ask advice on itt, & if it was so he would put me in possession. Accordingly he came & found it to be true, & I gave Bail, & he put me in Possession 2 Days after, & since y<sup>t</sup>. I never heard anything about these 3 Executions but have enjoyed my Estate peascably.

On      <sup>2</sup> I sited F. Lewis to Exhibit an Inventory of y<sup>t</sup> Personal Estate of my Bro<sup>r</sup>. R<sup>d</sup>. & an Acc<sup>t</sup> of his Adm<sup>n</sup>. but he neglecting to do it, I petitioned his Excellency y<sup>t</sup> Governor<sup>r</sup> to repeal his Letters of Adm<sup>n</sup>. & grant y<sup>m</sup>. to Me as being y<sup>t</sup> next of Kin, & after 2 hearings of Council in y<sup>t</sup> Affair his honour y<sup>t</sup> Cheaf Judge gave his Opinion in wrighting to his Exce<sup>r</sup>. y<sup>t</sup>. I in Law & Justice ought to have y<sup>t</sup>. adm<sup>n</sup>. granted to me (it is remarkable y<sup>t</sup>. in this hearings F. Lewis produced Letters of adm<sup>n</sup>. granted to him in trust for Eliz: Annely who was above 30 years of age, & y<sup>t</sup>. 20 miles of N. York, Dated y<sup>t</sup> next Day after my bro<sup>r</sup>. Death, & y<sup>t</sup>. Adm<sup>n</sup>. Bond Dated y<sup>t</sup>. Day after this runs thus, Letters of Adm<sup>n</sup>. &c. dewring y<sup>t</sup> absence of y<sup>t</sup> next of Kin), but y<sup>t</sup> Deputy Secretary acquainted me that his Excellency Intended to give y<sup>t</sup>. Adm<sup>n</sup>. to my Sister Elizabeth & Francis Lewis her husband. (you must know y<sup>t</sup>. my storny,<sup>4</sup> seeing their design'd fraud by thair procuring such Letters of Adm<sup>n</sup>. Acquainted Me as he did several others, y<sup>t</sup>. most peopel beleaved that they was not Marry'd & y<sup>t</sup>. if his Excellency should give y<sup>m</sup>. y<sup>t</sup>. Adm<sup>n</sup>. & they should be sued in y<sup>t</sup>. name of Elizabeth Lewis & Francis her Husband, & he should deny y<sup>t</sup> Marryage y<sup>t</sup>. Action would be defeated to prevent w<sup>t</sup>. it was suggested in y<sup>t</sup> Petition w<sup>t</sup>. rumors of this sort was spread about, & prey'd y<sup>t</sup>. if it should be thought fitt for her to have any share in y<sup>t</sup> Adm<sup>n</sup>. That for Honour &c. The Marryage might be Proved, M<sup>r</sup>. Murray made a handel of this to exclain against Me in a most Billingsgate Manner, to suspect y<sup>t</sup> Honour of my Sister, Tho Francis Lewis was there who never sed a word to vindicate her Honour, or produce one evidence to prove y<sup>t</sup> Marryage, y<sup>t</sup>. second hearing M<sup>r</sup>. Murray went on in y<sup>t</sup>. same vulgar manner, abusing Me who he knew nothing off, & still no proff was Offer'd, only twas sayd Colonel Morris<sup>3</sup> saw y<sup>m</sup>. Marry'd. Now he was in town at M<sup>r</sup>. Lewis's both y<sup>t</sup> Days y<sup>t</sup> Pleadings was And as for his word there is no one that knows his Character would mind it a straw.) At which I required of ye Deputy Secretary y<sup>t</sup>. thair Marryage might be proved first, & told him my Reasons & y<sup>t</sup>. hardships we should undergoe, & y<sup>t</sup>. risque of having our Actions defeated &c. he made no answer but bid me call again, & 2 days after I did, & he acquainted me y<sup>t</sup>. y<sup>t</sup>. Adm<sup>n</sup>. would be granted to y<sup>m</sup>. w<sup>t</sup>. out taking any further Notice about the Marryage &c. I then asked him w<sup>t</sup>. Bondsmen was proposed & y<sup>t</sup> Sum they should become bound for, And he told me y<sup>t</sup>. there was only to be Colonel Morris, & y<sup>t</sup>. y<sup>t</sup>. Sum but a £1000. I told him y<sup>t</sup> Law required More bondsmen, & y<sup>t</sup>. y<sup>t</sup>. Estate appeared to be so large y<sup>t</sup>. y<sup>t</sup>. Bonds ought to be for £3000, but all I could say signified nothing, & on July y<sup>t</sup>. 1<sup>st</sup>. 1749, The other Letters was repealed, & new ones granted to Eliz: Lewis & Francis her Husband.

<sup>1</sup> Jamaica.

<sup>3</sup> Clinton.

<sup>2</sup> This blank in the original.

<sup>4</sup> William Smith, the elder.

<sup>5</sup> Richard Morris, Judge in Admiralty.

The 3 Persons chiefly concerned in y<sup>e</sup>. wronging My Brother's estate seem to have separate views in it before he was dead, his housekeeper, M<sup>r</sup>. West endeavoured to robe it for herself, My Sister to defraud y<sup>e</sup> Estate in hopes to bribe Lewis for a Husband, & Lewis was to fling y<sup>m</sup>. both & keep y<sup>e</sup> estate himself. Never Man had more barbarous people about him in his last moments y<sup>a</sup>. my Brother. For y<sup>e</sup>. above M<sup>r</sup>. West (who is a woman y<sup>t</sup>. talkes a great deal & thinks but littel) in relating my Bro<sup>r</sup>. sickness sed, y<sup>t</sup>. when he lay a dying both she & my sister came to him & lifted him up in y<sup>e</sup> Bed, & one of y<sup>m</sup>. first Cried if you will leave me such an Estate lift up your hand for God sake as a token of your consent, (he being y<sup>a</sup>. speachless) & after y<sup>e</sup>. Other cryed in y<sup>e</sup> same manner (& as y<sup>e</sup>. Neighbor's affirm their cryes & screaches was heard a goode way of). On this Doctor Standard<sup>1</sup> of Westchester, who attended him hapned to come & went into y<sup>e</sup>. Room & severely reprimanded them for their barbarity in keeping y<sup>e</sup> Man from Dying, & bid them to lay him down w<sup>b</sup>. they did, & he instantly Dyed. My sister related to Us part of this story, & saying she should never forgett her Brothers looks at her, she could goe no further. This seemed very strange to Me y<sup>t</sup>. they should ask my bro<sup>r</sup>. to lift up his hand as a token &c. when Lewis had swore he made a Nuncubitive<sup>2</sup> Will, wherein they both was left allmost all he had, but 2 or 3 year after this relation to me the whole affair was brought to light. For one Rosanah Burk who served her time out w<sup>b</sup>. My bro<sup>r</sup>. ; & after Marryed one of his Men, a Naylor, did Use to chore in y<sup>e</sup> house, & after my brothers decease went w<sup>b</sup>. her husband to Philadelphia, & he dying there about 2 year's agoe she came to York, & hearing ye trouble M<sup>r</sup>. Lewis had given us, she came into our Shop,<sup>3</sup> & was saying she heard we had a great deal of trouble in getting y<sup>e</sup> Estate my bro<sup>r</sup>. left me ; at w<sup>b</sup>. My Wife reply'd My bro<sup>r</sup>. left me no estate ; at this y<sup>e</sup>. woman colour'd & sed she knew that her master Rich<sup>d</sup> Annelly made a Will & left all he had to his eldest Bro<sup>r</sup> Edward. My wife told her she mistook strangely, on this y<sup>e</sup> above Rosanah say'd y<sup>t</sup> y<sup>e</sup>. Day her master Rich<sup>d</sup> Annelly Died she tended him all ye time, & y<sup>t</sup>. in the Morning he sent John West to Flushin to Desire M<sup>r</sup>. Phillips to come to him to write his will, he went & brought M<sup>r</sup>. Phillips, who was afraid to come to y<sup>e</sup>. House by reason his disorder was y<sup>e</sup> Youler Feavour,<sup>4</sup> but went to y<sup>e</sup> Next Neighbours house, On w<sup>b</sup>. M<sup>r</sup>. Lewis came into y<sup>e</sup> Room & sed M<sup>r</sup>. Phillips was come, & asked him how he Intended to dispose of his Estate, On w<sup>b</sup>. he say'd y<sup>t</sup> all he had in y<sup>e</sup> World he would give to his Brother Edward Annely, a Gunsmith in y<sup>e</sup> City of Bristol. M<sup>r</sup>. Lewis then asked him what he would give his sister Elizabeth, to w<sup>b</sup>. he said he would leave her to his Bro<sup>r</sup> Edward for he knew best w<sup>t</sup>. to give her. M<sup>r</sup>. Lewis y<sup>a</sup>. asked him w<sup>t</sup>. he would leave his Kinsman Barnet Badger, to w<sup>b</sup>. he replied I will leave him with his Ant till my Bro<sup>r</sup>. Edward comes, & lett him do as seemis good to him, & I desire you would send for M<sup>r</sup>. Doughty & Bloodgood, to take an Inventory here of all I have before I dye, & send a Copy of him by y<sup>e</sup>. first ship to my Bro<sup>r</sup>. Edward, & y<sup>t</sup>. he would come here by the first ship. Doughty & Bloodgood took an Inventory, but I could by no method come to a sight of him, & relating last summer y<sup>e</sup> above Relation to y<sup>e</sup> above Philips, I observed his colour to rise up in

<sup>1</sup> The Rector of St. Peter's Parish, Westchester County.

<sup>2</sup> Nuncupative.

<sup>3</sup> His gunsmith's shop.

<sup>4</sup> Yellow Fever.

his face, and he say'd it was certainly a true Relation, for he remember'd y<sup>t</sup>. Lewis came to Doughty's to him & brought a paper writ by Rich<sup>d</sup> Annely whose handwriting he was well acquainted with & y<sup>t</sup>. y<sup>e</sup> purport of it was agreeable to w<sup>t</sup>. y<sup>e</sup> woman related, & y<sup>t</sup>. Lewis carry'd y<sup>e</sup> Paper away w<sup>t</sup>. him, on w<sup>t</sup>. M<sup>r</sup>. Doughty say'd to Philips y<sup>t</sup>. is R<sup>d</sup>. Annelys own handwritting, & M<sup>r</sup>. Lewis dont like that for his Will. Some time after this M<sup>r</sup>. Lewis came & related by word of Mouth w<sup>t</sup>. he sayd R<sup>d</sup>. Annely would have writ for his Will, quite contrary to y<sup>e</sup>. above, & w<sup>t</sup>. was Writ in the Paper, & he delayed him from Morning till Night w<sup>t</sup>. R<sup>d</sup>. Annely died before it was finished. Now Mr. Lewis told me & others that he designedly delay'd ye Wills being finished, because he sed R<sup>d</sup>. Annely say'd nothing about paying his Debts, but M<sup>r</sup>. Philips say'd he writ y<sup>e</sup>. Will as usual after all my lawfull Debts is paid I &c.

Now there was a good reason why My Bro<sup>r</sup>. would leave My Sister Elizabeth nothing by will, but leave it to w<sup>t</sup>. I should think best, for You must know w<sup>t</sup>. M<sup>r</sup>. Lewis came last from england where he stay'd on frivolous pretences 2 Year's, (& y<sup>t</sup>. whole burden of y<sup>e</sup>. Partnership lay on my bro<sup>r</sup>.) My bro<sup>r</sup>. sed to him y<sup>t</sup>. since he had transacted all ye business for 2 years it was high time for him now to act, y<sup>t</sup>. he might now have time to look to his concern in private Trade (w<sup>t</sup>. Trade Lewis allways looked on w<sup>t</sup>. an envious Eye) on this a Quarrel ensued & they advertised their breaking of Partnership, & y<sup>e</sup>. difference was not made up to my bro<sup>r</sup>. Death; dewring this Difference My sister Imprudently took Lewis's part w<sup>t</sup>. very much disgusted him, this w<sup>t</sup>. w<sup>t</sup>. one Porter thair Clark told him concerning Lewis's & my Sister too Familiarity (w<sup>t</sup>. he after openly publish'd in y<sup>e</sup> street before all y<sup>e</sup>. Neighbourhood gather'd together) must needs determine him to leave her nothing in her own power, by reason Lewis would have itt, & I think time has made it clearly appear.

Another circumstance of thairs in order to defraud me was this; when on Sept. 12, 1749, I urged y<sup>e</sup>. Sheriff to Execute my Writt of Possession & he denied itt before several Peopel, Lewis called him out, & some time after he came in & served Me as Heir to my bro<sup>r</sup>. Rich<sup>d</sup>. with a Writ for £200. I took a Copy of him. You must know that in y<sup>e</sup> Year 1739 Abraham Huisman & Annely & Lewis took Up of one M<sup>r</sup>. Feasey<sup>1</sup> £200, & gave thair Bond for itt, Huisman as I found lately writ his Name to one Seale & my bro<sup>r</sup>. or Lewis writ Annely & Lewis to y<sup>e</sup> Other Seal, w<sup>t</sup>. out knowing y<sup>e</sup>. Difference between a Bond & a Bill &c. Feasey Died & his Widlow Married one M<sup>r</sup>. Horsmander<sup>2</sup> to whome I went & on 18<sup>th</sup>. of Sep. Asked him if he had any Demand on y<sup>e</sup> Estate of Rich<sup>d</sup>. Annely & he told Me he had not, on w<sup>t</sup>. I told him I was sued in his Name as heir to R<sup>d</sup>. Annely & shew'd him y<sup>e</sup> Copy of y<sup>e</sup> Writ, And then he sed he had forgott, For he had a Bond given by Annely & Lewis to M<sup>r</sup>. Feasey for £200, & had assigned him over to M<sup>r</sup>. Lodge, and in february following he told me y<sup>t</sup>. Lewis & Lodge had paid him y<sup>e</sup> Bond he had & assigned him over to them, In thair Declaration they makes y<sup>e</sup> Bond £226.

In Octo. Term 1750 This was to be brought to tryal, And I had gott w<sup>t</sup>. Witnesses I thought might give light to ye Affair, w<sup>t</sup>. they gott y<sup>e</sup> Tryal to be

<sup>1</sup> Rev. Dr. Vesey, Rector of Trinity Church.

<sup>2</sup> Judge Horsmanden of the Supreme Court, subsequently Chief Justice.

putt off for 4 Days longer, in w<sup>ch</sup>. time on Oct 20 My Attorney M<sup>r</sup>. Smith's Eldest son<sup>1</sup> came to Me, & sed M<sup>r</sup> Lodge was w<sup>th</sup>. his Father, & had assured him y<sup>t</sup> Feaseys Bond had but one Seal to him, to w<sup>ch</sup>. Annelys Name was Writ, And y<sup>t</sup> Lewises & Huismans Names was writ under but no Seals to y<sup>m</sup>. That M<sup>r</sup>. Lodge proposed y<sup>t</sup>. if I would order M<sup>r</sup> Smith to Confess Judgment to y<sup>t</sup> Bond in order y<sup>t</sup>. he might have y<sup>t</sup> Money Secured to him as he payd it to M<sup>r</sup> Horsmander, y<sup>n</sup>. Huismans Estate should pay one third of it, and Lewis another third, & he would lett the other third remain till y<sup>t</sup> Estate of Annely was settled, & if there was Effects enough to pay it, Lewis should pay it, & if not y<sup>t</sup> Real Estate y<sup>n</sup>. should, the w<sup>ch</sup>. M<sup>r</sup>. Smith thought reasonable & equitable And on this Condition I told him he might gett Judgment Confess'd w<sup>ch</sup>. they did. M<sup>r</sup>. Smith since this Asked Me w<sup>t</sup>. they should do in this case, on w<sup>ch</sup>. I repeated y<sup>t</sup>. agreement his son had made, he being there present y<sup>t</sup>. Father Asked him if this was y<sup>t</sup>. Agreement, to w<sup>ch</sup>. he sed it was, y<sup>t</sup>. y<sup>t</sup>. Father reply'd it is very well & we must keep up y<sup>t</sup> Dignity of our Office. And since w<sup>ch</sup>. time I have hard nothing of this affair.

Francis Lewis on 29<sup>th</sup>. of Dec. 1749 Exhibited an inventory of Rich. Annely's Estate Debts Credits &c. y<sup>t</sup>. was in Private Trade and not conserned in thair Partnership, (but whether it is agreeable to y<sup>t</sup>. which Doughty & Bloodgood took I dont know) This Inventory Lewis & my Sister swore was all y<sup>t</sup>. ever came to thair knowledge &c. Yet on or about last Novem<sup>r</sup>. Francis Lewis & Elizabeth his Wife Exhibited an Other Inventory wherein he & my Sister gave my Brothers Estate Credit for four or five Hundred Pounds worth of Goods y<sup>t</sup>. was not mention'd in y<sup>t</sup> first Inventory & w<sup>ch</sup>. Goods was in thair possession at ye time of my brothers decease in thair store at New York & this Sworn to. In y<sup>t</sup> year 1750 he Exhibited in y<sup>t</sup>. Secretarys Office an Acc<sup>t</sup>. of his payments & disbursements on y<sup>t</sup> Acc<sup>t</sup>. of y<sup>t</sup> Estate, where in he charges y<sup>t</sup> Estate w<sup>th</sup>. £118 : 9. 0. for expences in Maintaining 3 Naylors whose times he bought & who made Nailes for him, He likewise charges y<sup>t</sup> Estate w<sup>th</sup>. his paying Peopel some Hundreds of pounds y<sup>t</sup>. my Brother never owed, as severall peopel has decleared to me, and severall Large Debts y<sup>t</sup>. belonged to Annely & Lewis in Company he has charged y<sup>t</sup> Estate as belonging solely to R<sup>d</sup>. Annely, he charges y<sup>t</sup>. Estate w<sup>th</sup>. £90. 6. 0. for Rod<sup>2</sup> Iron y<sup>t</sup>. came from Holland in y<sup>t</sup>. Comp: Ship 5 months after my Brother's Death & yet never Mention's this rod Iron in y<sup>t</sup> Inventory He credits y<sup>t</sup>. Estate w<sup>th</sup>. but £6 for 2 Negroes York & Will, which cost my bro<sup>r</sup>. £50 & are now worth £60 & most of y<sup>t</sup>. Other things was estimated in y<sup>t</sup>. same manner, Yust as he thought fitt, there being no one to appraise y<sup>t</sup>. Goods &c. There was £300 my bro<sup>r</sup>. took up upon Bond of M<sup>r</sup>. Dolage for y<sup>t</sup> Use of y<sup>t</sup> Comp: , & got M<sup>r</sup>. John Vanderspiegel to Joyn w<sup>t</sup>. him in y<sup>t</sup> Bond, & to Indemnify him Mortgaged his house to him in New York. After my bro<sup>r</sup>. Death M<sup>r</sup>. W<sup>m</sup>. Vanderspiegel (who was a Partner w<sup>th</sup>. Annely & Lewis in Philadelphia) pays M<sup>r</sup>. Dolage £207. 3. 9. in full for this Bond on y<sup>t</sup> Comp<sup>y</sup>. Acc<sup>t</sup>. & charges y<sup>m</sup>. w<sup>th</sup>. it in y<sup>t</sup>. Comp<sup>y</sup>. Ledger fol. 164, Yet M<sup>r</sup>. Lewis in his Acc<sup>t</sup>. of Disbursements sworn to he charges my bro<sup>r</sup>. Estate w<sup>t</sup>. paying of this Bond £300, (as tho y<sup>t</sup> Bond was

<sup>1</sup> William Smith the younger, after the war, Chief Justice of Canada.

<sup>2</sup> Wrought.

on his own private Acc<sup>t</sup>) and after getts Mr. John Vanderspiegel to assign over to him this mortgage in order y<sup>t</sup> he may charge y<sup>t</sup>. Real Estate with £300 more, so y<sup>t</sup>. in this one article he Intends to defraud y<sup>t</sup> Estate of £600.

"Upon Enquiry I cant find y<sup>t</sup>. my Bro<sup>r</sup>. Rich<sup>d</sup>. owed much in America but what he was conserned in on Bond, and every one y<sup>t</sup>. I ever heard say they had any dealings with him sed he was an honest Man & a fair trader, & generally pay'd ready money for w<sup>t</sup>. he bought. (but I never heard any one Man say Lewis was an Honest Man or a fair Trader) Yet Lewis has Charged his Estate w<sup>t</sup>. Large Sums of Money he says he has pay'd Peopel here, but he has not proved y<sup>t</sup>. he has paid any of these Debts, except a few small Debts of 4 or 5 £. a pease y<sup>t</sup>. he sess was attested to &c.

That my Bro<sup>r</sup> Rich<sup>d</sup> Died worth very Considerable apears from F. Lewis's Letters to Tho<sup>r</sup>. Annely (w<sup>t</sup>. Letters I have) in one of them Dated 16<sup>th</sup>. Decem'. 1743 He says, I have taken a List of Debts Due to me (y<sup>t</sup>. is y<sup>t</sup> Compy) in this City only amounting to £2200 Cur<sup>t</sup>. w<sup>t</sup>. I deem all Good, & hope to gett in soon, In y<sup>t</sup>. Country above £11000 Curr. Due, The Batchelors from Holland & Cargoe Value £800 A new Brigg lately bought to gett in some Debts value £800, House & Improvements val : £800, Sloop Speedwell & Cargoe now laden I own one half value £500 all this I am very well Satisfied is more y<sup>t</sup>. enough to Discharge all our Obligations in England the Debts now due to Us & y<sup>t</sup> Europeon Goods unsold in our store is more y<sup>t</sup>. y<sup>t</sup> amount of all y<sup>t</sup>. Consignments we ever had, I am very well assured was we to Dissolve our Phila<sup>r</sup>. House our part of y<sup>t</sup>. Stock & Profitts there would amount to £2000, for w<sup>t</sup>. I was in England I shipt upon our Joyn<sup>t</sup> Acc<sup>t</sup>. to y<sup>t</sup> house y<sup>t</sup>. value of £2000 stc. for w<sup>t</sup>. it is Indebted to this House. Now tho this Amounts to £18100 besides y<sup>t</sup> European Goods in their Store unsold w<sup>t</sup>. was to y<sup>t</sup> value of several Thousands of pounds, yet most of y<sup>t</sup>. Articles is underrated as apears by y<sup>t</sup> Acc<sup>t</sup>. of Lewis's valuing y<sup>t</sup> Brigg Bachelor's & Cargoe at but £800, Cur. w<sup>t</sup>. Tho<sup>r</sup>. Annely had by thair Order's Insured her & Cargoe at £800. Ster<sup>t</sup>. likewise the Sloop Speedwell he values at but £500, Cur. w<sup>t</sup>. at my bro<sup>r</sup>. Death she was on her voige from Philadelphia to Coracoa & Insured by Tho<sup>r</sup>. Annely for them at £375 Ster<sup>t</sup>. as appears by his Acc<sup>t</sup>. &c. & its Customary to merch<sup>t</sup>. in N. York never to Insure thair full Interest

Rich<sup>d</sup>. Annely's Trading on his own Private Account was very Considerable as apears from Tho<sup>r</sup>. Annely's Acc<sup>t</sup>. Currant against him y<sup>t</sup>. amount of w<sup>t</sup>. was £3567 : 1 : 3 : Sterlings, Now he dealt in England w<sup>t</sup>. severall other Peopel &c.

Rich<sup>d</sup>. Annely's Caracter in N York is well known to be a Saving Close Man, y<sup>t</sup>. he Traded very largely, & y<sup>t</sup>. his losses was very Inconsiderable. For Lewis w<sup>t</sup>. all his Skill could not make appear y<sup>t</sup>. he mett w<sup>t</sup>. any losses worth mentioning.

Tho Lewis has given out y<sup>t</sup>. my Bro<sup>r</sup>. Rich<sup>d</sup>. Suroumstances at y<sup>t</sup>. time of his Decease was very ornary<sup>1</sup> & his own not much better, yet he kept y<sup>t</sup> Brigg Batchelors Brigg Sarah & Sloop Speedwell to trade on his own acc<sup>t</sup>. & bought y<sup>t</sup> Ship Antient Britton. of 400 tons to trade w<sup>t</sup>. on his own proper Acc<sup>t</sup>. Which I think he could not do unless R<sup>t</sup>. Annely died worth a considerable Sum, Since but 4 year before w<sup>t</sup>. my bro<sup>r</sup>. took him into partnership he was not worth a penny, being a Shopman at £15 a year to M<sup>r</sup>. Sydenham Shipway a linnen drapier in y<sup>t</sup>

<sup>1</sup> Ordinary.

City of Bristol, & he was Imposed on my Bro<sup>r</sup>. as a Partner by y<sup>e</sup> Contrivance of some of his Consigner's, or they threatened to employ him no more &c.

Lewis has taken a Great deal of pains to Insinuate to Peopel yt. My bro<sup>r</sup>. Rich<sup>t</sup>. Sunk a good deal of Money at White Stone by carrying on y<sup>e</sup> Pipe making & Nayling Business y<sup>t</sup>. contrary of w<sup>ch</sup>. must appear to every one when they are acquainted y<sup>t</sup>. he had above 20 Servants there y<sup>t</sup> worked at y<sup>e</sup> Buisness, & he had only Victuals and clothing to find y<sup>m</sup>. in, & each man was tasked to do so much work every Day, & so much provision for each man a Day & but one Man upon Wages w<sup>ch</sup>. overlooked the rest. Now every Man y<sup>t</sup>. moulded Pipes (whereof there was 7) was obliged to Mould 7 Groce a Day w<sup>ch</sup>. at 3 shillings a Groce come to 21/- & allowing 2 Men to attend each Moulder in preparing Clay burnishing & burning them, the neat profit of 3 Men each Day would be at Least 15/- Now how can it be possible y<sup>t</sup>. Money can be Sunk by carrying on such a Work And there was a Ship load of Servants Consigned them from Ireland, & as there was not a ready sale for them<sup>1</sup> my Brother, carry'd a Good many of them to White-stone & employ'd them on y<sup>e</sup> Estate &c. & y<sup>e</sup>. Merchants was charged 5/- a Week for thair board till they was sold. W<sup>th</sup> such advantages it was very easy for a Man y<sup>t</sup>. understood Manufacturing Goods to have got £500 a year.

M<sup>r</sup> Lewis has made a handel of y<sup>e</sup> Will of my Bro<sup>r</sup> Rich<sup>t</sup>. y<sup>t</sup>. was found in England, to Insinuate y<sup>t</sup>. he Intended to leave all he had to our Sister Elizabeth. But when the Surcumstances of y<sup>e</sup> Affair is considered it will appear otherwise. For he came to New York in 1734 with about £800 Ster: worth of Goods y<sup>t</sup>. was Consigned him (he having nothing of his own, being but a Quorter Old when our father Died, & 10 Brothers & Sisters of us, all his fortune was expended in bringing of him Up) he sold these Goods & returned home & gott by ye Sale about £100. & having a fresh cargoe Consign'd him, he Writt a Will y<sup>t</sup>. in case he Died abroad he lefft w<sup>t</sup>. he had to his Sister Elizabeth who was the only one of y<sup>e</sup> Family y<sup>t</sup>. was unprovided for being maintained at that time by my Bro<sup>r</sup> Thomas & me, who was y<sup>t</sup>. partner's together in y<sup>e</sup> Gunsmith Trade. But 7 year's after this w<sup>n</sup>. he Died, I had met with a great many losses & was become y<sup>t</sup> only person in our family y<sup>t</sup>. in Gratitude he ought to have consider'd most, by reason I maintain'd him several years, And w<sup>n</sup>. Our Mother had run behind hand in bringing Up so many Children, I gave all most all my fortune to clear her of her Debts y<sup>t</sup>. she might enjoy her Estate in peace & quietness y<sup>t</sup>. remainder of her Days.

On 13th December, 1775, Congress resolved that thirteen frigates, from 24 to 32 guns each, should be built in the different colonies at a cost of 66,666 dollars each, of which two were to be constructed in New York, not six, as the text states. Lewis was one of the committee of twelve appointed the next day to carry out the resolution.<sup>2</sup> The New York vessels were built at Poughkeepsie, and called the "Congress" and the "Montgomerie," and, though ready for launching in the autumn of 1776, were still uncompleted at Esopus (where they had been ordered after being launched) in April, 1777,

<sup>1</sup> They were sold for their passage money.

<sup>2</sup> 25 years.

<sup>3</sup> Journals Congress, 1775, pp. 292, 293.

when Lewis paid Samuel Tuder 10,000 dollars "for the use of the frigates building on Hudson's River."<sup>1</sup> In October of that year they were burnt at that place, as the text states, by Sir James Wallace. Mr. Lewis was appointed a member of the Continental Congress in April, 1775, in October, 1777, and in October, 1778,<sup>2</sup> which was his last service. For his connection with public movements in New York in 1774 and 1775, mentioned in the text, the reader is referred to notes XIII. to XVI. of volume I. He died in New York, December 30, 1802, aged 90 years.<sup>3</sup>

No biographic or obituary sketch appeared in any of the papers of the city as far as can be ascertained.

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#### NOTE LV.

SIR WILLIAM JOHNSON—HIS CHARACTERISTICS—HIS PARENTAGE—PERSONAL APPEARANCE—HIS RESIDENCES—MARRIAGE—CHILDREN—DESCENDANTS—DEATH—FUNERAL—THE OPENING OF HIS GRAVE AND HIS RE-INTERMENT.

*Vol. II., p. 362.*

NONE of the distinguished men of New York in the last century have been oftener described than Sir William Johnson. Poets, novelists, essayists, travelers, and historical writers have made him their theme, and all alike have failed in justly depicting the man and his character, either as an individual or a leader of men.

In his origin a gentleman of good family, in social life a favorite, in high office honoured, in politics sagacious, in the battlefield brave and skilful, in the cabinet wise and cool, in Indian councils firm, clear, honest, eloquent, and peerless in influence and power, he has been described as exactly the reverse. This has been owing mainly to political and religious prejudice and real ignorance of the man and his career.

<sup>1</sup> Journals Prov. Con., Vol. II., p. 425.

<sup>2</sup> N. Y. Civil List.

<sup>3</sup> N. Y. Spectator.

The floating gossip of the Mohawk valley, gathered up from inimical sources by inimical writers long after his death, and the expulsion of his family and its friends from that beautiful region (which owes its early development and prosperity more to him than to any other man who ever dwelt within its borders), deeply dyed by sectarian bigotry, New England prejudice, and the antagonism of a civil war, is the basis of the common estimate of Johnson.

Not until the recent rescue and preservation by the State of New York of the great mass of his public and private papers, the arrangement of them for examination, and the publication of many of them in the "Documentary History" and the "Colonial History," was it possible to acquire the facts and information which show the utter incorrectness of the ordinary accounts of this remarkable man.<sup>1</sup> The recent Life of Sir William Johnson, by William L. Stone, although not correct in many respects, is, however, a well-meant effort to do justice to his subject, and is the best account of Johnson that has appeared.

Sir William Johnson was born in Smithstown, in the County of Meath, a few miles west of Dublin, in Ireland, at the residence of his father, Christopher Johnson, an Irish gentleman of standing and property in that county, in the year 1715. His mother was Anne Warren, a sister of Captain Oliver Warren, R.N., and of Admiral Sir Peter Warren, K.B., whose name is identified alike with the naval glory of England and the history of the Province and City of New York. The Warrens were a family of property and position at Warrenstown, in the County of Meath, nearly opposite Smithstown, and neighbors of the Johnsons. Sir William's father died at the age of 84, in 1763.<sup>2</sup> His mother died the 26th of January, 1744.<sup>3</sup>

Young Johnson was educated, it is believed, in Dublin; but how thoroughly is uncertain. He understood French

<sup>1</sup> Besides the works above mentioned, twenty-one huge volumes of Johnson's manuscripts are preserved in the State Library of New York.

<sup>2</sup> These facts are given in Sir William's MS. inscription for a monument to his father and uncles.

<sup>3</sup> MS. Letter of Lady Warren to Sir William.

and Latin to some extent at least, as is shown by his papers and correspondence. The style of his official communications and reports to the colonial authorities and to the British Government and ministers, and his voluminous correspondence, which have been preserved, show a knowledge and command of language which only a good education could give.

The lists of books and works of art which he imported from England while living on the Mohawk, not only evince education and culture, but a fondness for some branches of science.

In "a memorandum for trifles, sent to London for, through Capt. Knox, Feb. 19, 1749-50," as he himself heads it (which, be it remembered, was but eleven years after his arrival in America, and when he was under 35 years of age), are mentioned :

"Two Vols., 4to, of Mathematical Elements of Natural Philosophy, or an Introduction to Sir Isaac Newton's Philosophy, translated into English by the late J. T. Desaguliers. Also the second edition of Dr. Desaguliers's Course of Experimental Philosophy, adorned with 78 copper plates, in two vols., quarto. Roderick Random (then almost 'a new novel'). The Gentleman's Magazine from Dec., 1748. An Historical Review of the Transactions of Europe from the Commencement of the War with Spain. The whole proceedings of the House of Peers against the three condemned lords. Amoryllis, a new musical design, well bound. Some prints, as Titian's Love of the Gods. Le Brun's Battles of Alexander. Some numbers of Poussin's Landscapes by Knapton. Four prints of a camp by Watteau. Some numbers of Houbraken's Heads."

Surely a coarse, rough, vain, illiterate, half-savage frontiersman, destitute of all delicacy and refinement, as he is usually described, would never have wanted books, music, and works of art like these in his home on the Mohawk.

When about two-and-twenty, Johnson fell desperately in love with a fair maid of Meath, whom he was bent on marrying. His parents did not approve of the match, deeming it beneath him, and refused their consent. This threw him into

<sup>1</sup> MS. in the Johnson Papers at Albany.

despair, as without his father's aid he had no means of supporting a wife, and his father was inexorable. At this juncture his uncle, Sir Peter Warren, happened to return from a cruise, and, learning the facts of the case, offered his nephew the entire charge of his large estates in America, most of which he had received with his wife, the eldest daughter of Etienne (or Stephen) De Lancey, an opulent French gentleman, of New York, and his influence and pecuniary aid towards his advancement, provided he would settle upon and improve that portion of the property lying on the south side of the Mohawk, which, after his own name, he had called Warrensburgh.<sup>1</sup>

Johnson accepted the offer, and early in 1738<sup>2</sup> came to New York, and entered at once upon the labors and duties he had undertaken.

He was very successful, at once winning the respect and esteem of both whites and Indians. After a few years he bought lands on the north side of the Mohawk, opposite his uncle's, and erected, fronting the river, a large double stone-house of striking appearance, which he called "Mount Johnson." When the French war began he fortified it, and hence it was sometimes styled "Fort Johnson." It still stands, a gentleman's handsome country seat, about a mile and a half west of the village of Amsterdam, on the Mohawk.

A thoroughly honest man himself, Johnson always treated the Indians with perfect honesty and justice. He would never deal with them when they were under the influence of liquor, nor yield to them in anything when he had once refused. This course, added to his easy but dignified and affable manners, and the intimacy which he cultivated with them, by accommodating himself to their manners, and sometimes even to their dress, soon won for him their love, esteem, and entire confidence. And he acquired an influence over them greater than ever possessed by any white man before or since his day. The only other person resembling him in this respect was the first Peter, or as the Indians called him, "Queder," Schuyler

<sup>1</sup> Not *Warrensbush*, as some writers have stated.

<sup>2</sup> Col. Hist., N. Y., Vol. VII., p. 671.

of Albany; but *his* influence was confined to the Indians immediately in the neighborhood of Albany, while Johnson's extended to all the tribes east of the Mississippi and south of the Lakes. He became a master of their language, speaking many of their dialects as perfectly as they did themselves; and was thoroughly acquainted with their peculiar habits, belief, and customs. He was adopted by the Mohawks as one of their own tribe, chosen a sachem, and named "Wariaghejaghe" or "Warraghiaghy," meaning "He who has charge of affairs."

Sir William Johnson's personal appearance was striking. He was above the usual height, and elegantly formed—had black hair, dark, piercing eyes, clearly cut features, a rich florid complexion, refined aspect, and a rather pensive expression when his countenance was at rest, as he is depicted in an elegant portrait now in the possession of his great-grandson, Capt. John Ormsby Johnson, of the British Navy.

One of his contemporaries, who knew him well, says, "he was an uncommonly tall, well-made man, with a fine countenance, which had rather, however, an expression of dignified sedateness approaching to melancholy. Though really of a jovial and genial disposition, he appeared to be taciturn, never wasting words on matters of no importance, but highly eloquent when the occasion called forth his powers. He possessed intuitive sagacity and the most entire command of temper and of countenance."

In 1739, the year after his arrival in America, Sir William married Catherine Wisenberg, a native of Germany whose parents had settled on the Mohawk, and who died in 1759,<sup>1</sup> leaving three children surviving her, Sir John Johnson, Knight and Baronet, and two daughters, Ann, who married Colonel Daniel Claus, and Mary, who married her cousin, and her father's successor as Superintendent of Indian Affairs in North America, Colonel Guy Johnson. Sir John, while on a visit to England, where he remained two or three years, was in 1765 knighted by George III. in his father's lifetime as a

<sup>1</sup> Statement of Sir John Johnson himself to his daughter, Mrs. General Bowes, a copy of which, in her own handwriting, is in the editor's possession.

mark of favor to his parent. In 1773, hardly a year before his father's death, Sir John married Mary Watts, born 29th October, 1753, fourth daughter of the Hon. John Watts,<sup>1</sup> of New York, by whom he had a large family.<sup>2</sup> His career was striking, varied, and almost as remarkable as that of his father. He was a handsome, well-made man, a little short, with blue eyes, light hair, a fresh complexion, and a firm but pleasant expression.<sup>3</sup> He was quick and decided in disposition and manner, and possessed of great endurance. He resided some time at Twickenham, in England, but returned to Canada, where he died at his seat, Mount Johnson, near Montreal, on the 4th of January, 1830, in the 88th year of his age.<sup>4</sup> Lady Johnson died at the same place, August 7, 1815, in her 68th year.

The following extract from a MS. letter of Sir John's second daughter, Catherine Maria, widow of General Barnard Foord Bowes, who fell at Salamanca, in 1812, to her brother, the late Colonel Christopher Johnson, in reply to some inquiries about the family, given to the editor by the latter's widow,<sup>5</sup> is of importance and interest for its authenticity :

" You have no idea of the trouble of getting dates correct. Some I could not get. In the search among Julia's old papers, &c., many interesting matters have turned up—interesting to us to mark events. Col. Claus (he married Sir John's sister) died at Kings Castle, Cardiff, and was buried in Cardiff Church in (Novr.) 1787. Col. Guy Johnson died in

<sup>1</sup> By his wife Anne, youngest daughter of Etienne (Stephen) de Lancey, the first of that name in America, and a sister of Lady Warren, the wife of Sir Peter Warren, the uncle of Sir William Johnson.

<sup>2</sup> See any good Peerage and Baronetage for descendants.

<sup>3</sup> His portrait, an oil painting, taken in middle life, shown the writer of this note by one of his daughters-in-law, the widow of Col. Christopher Johnson, in London, in 1867, thus depicts him. His youngest child, Miss Alice Johnson, then living (who died the succeeding year), told me it was a capital likeness.

<sup>4</sup> See Note XXXI., Vol. I., p. 583, for the facts of his departure from Johnstown in 1776, and the proof of his release from his parole by General Schuyler, and the falsity of the charge of his having broken it. See also Notes XXIX. and XXX. of the same volume.

<sup>5</sup> Janet Susan, daughter of the late Admiral Colpoys.

1788 (March). Mrs. Johnson, Col. Guy's wife, died at Oswego, the day year<sup>1</sup> after her father, Sir William (11th July, 1775). She [Julia Johnson] has rings with the dates of many of these deaths, and our grandmother's wedding-ring, which was also *her mother's*, and [that] of her daughter, Mrs. Guy Johnson. . . . Julia has given me the wedding-ring, some old letters, and one of the mourning rings on Sir William's death; also a seal of Baron Dieskau's, merely a head, finely engraved."<sup>2</sup>

Johnson Hall, which Sir William built near Johnstown when he founded that place in 1764, was a large double wooden edifice with a high pitched roof and stood upon the brow of a hill which slopes gently on the south, and rather abruptly on the east, to the Cayadutta river. On each side of it and slightly in the rear, and equidistant from the house, were two detached stone wings, each two stories high and pierced with loop-holes in the upper story for musketry. Both were connected by subterranean passages with the main building. One of these was Sir William's own office, where he attended to all public business and kept all public papers. The other was the office for the business of his own estates, and those of others in his charge. All the buildings were surrounded by a breast-work as a matter of precaution. On the lower floor of the house was a large hall, with a mahogany staircase on the right of the entrance leading to the story above. On one side of the hall was Sir William's bedroom, at the end, and on the other side were a drawing-room and a large dining-room. The upper story of the house was devoted to guests, except a small suite of rooms occupied by his two daughters and their governess, the widow of a military officer. When the writer visited it twenty years ago both wings were intact, but one I am told is now gone. The house itself, however, is in good preservation.

Three days after his sudden and tragic death, on the elev-

<sup>1</sup> This means one year to a day after Sir William's death, which occurred July 11th, 1774. "Julia Johnson" was Guy Johnson's second daughter.

<sup>2</sup> The leader of the French at the battle of Lake George, who gave it to Sir William as a memento.

enth of July, 1774, at the close of a soft summer day, an immense funeral procession, said to have been 2,000 in number, attended the remains of Sir William from the Hall to the Church in Johnstown, a distance of nearly a mile and a half. The Indians, in their savage costume, unmoved in appearance but sad at heart, marched in a body by themselves with the greatest decorum. The pall bearers were Governor Franklin, of New Jersey,<sup>1</sup> Mr. Justice Jones, of the Supreme Court of New York,<sup>2</sup> Goldsbrow Banyar, the Secretary of the Province,<sup>3</sup> and Stephen de Lancey, Recorder of Albany.<sup>4</sup> Mr. Justice Jones was holding the term of the Supreme Court at the time, and the three other gentlemen were there officially, in attendance upon the Indian Council then being held. After the solemn services of the Church of England, the body was buried beneath the chancel of the church he had built, in the presence of his family, his friends, his sorrowing neighbors of the Mohawk Valley, and the red people he loved so well.

In 1836 this edifice was accidentally burned. It was rebuilt in 1838, in the same churchyard, but some distance from the original site. The precise location of Johnson's grave was therefore lost. In 1862 the Rev. Mr. Kellogg, the then Rector, who deserves the thanks of all New Yorkers, determined to discover it if possible. He was so fortunate as to do so at the first attempt, the shaft having been accidentally sunk directly upon the mason work of the tomb. The top of it was broken in, a part of the skull, the backbone, and some fragments, were all of the great chieftain that were found within,<sup>5</sup> and among them a plain gold ring inscribed on the inside—"June 1739, 16,"—which was believed, but erroneously, as the above letter of Mrs. Bowes proves, to be Sir William's wife's wedding-ring. It was, in all probability, a memento of the day of her death. The date, 1739, is given in the published account of the examination of the grave, but it may have been misread

<sup>1</sup> William Franklin, the natural son of Benjamin Franklin.

<sup>2</sup> The Author of this History.

<sup>3</sup> Provincial Deputy Secretary was his official title.

<sup>4</sup> Eldest son of Peter de Lancey, of West Farms, Westchester.

<sup>5</sup> Letter of W. F., an eye-witness, in N. Y. Evg. Post, of 17th June, 1872.

for 1759. If so, it would be the year Sir John said his mother died. Should it really be "1739," it probably marks some incident in Sir William's life not now known. This ring the editor has never seen, nor does he know where it now is. The remains, under Mr. Kellogg's direction, were placed in a hollow block of granite and hermetically sealed. On the seventh of July, 1862, they were re-interred in the tomb, which had been thoroughly repaired, with the same solemn funeral services with which they had originally been placed there eighty-eight years before, the officiating clergyman being the Rt. Rev. Horatio Potter, Bishop of New York, the Bishop of the Diocese in which Johnstown then was situated.

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#### NOTE LVI.

##### THE AID OF THE BRITISH GOVERNMENT TO LOYALISTS BEFORE THE PEACE OF 1783—ITS COMPENSATION TO LOYALISTS IN CONSEQUENCE OF THE PEACE OF 1783—OFFICIAL ACCOUNT OF THE AMOUNTS CLAIMED AND GRANTED.

THE British Government afforded temporary aid to a few Loyalists in distress from the beginning of the American War. When the events of that war, acting upon the political parties of the day in England, produced the fall of Lord North's ministry in the spring of 1782, and the accession to office of the Marquis of Rockingham and his friends (one of whom, the Earl of Shelburne, subsequently first Marquis of Lansdown, three months later, on Lord Rockingham's death in July, 1782, became Prime Minister, with a second new cabinet), an inquiry into this temporary aid was made. It showed that in the autumn of 1782 the number of persons aided then was 315, and the annual amount granted them was £40,280 sterling.<sup>1</sup> "As it was always expected that the

<sup>1</sup> Wilmot's Historical View of the Commission for Enquiring into the Losses, Services, and Claims of the American Loyalists, p. 15.

war would soon terminate, and that the greater part, if not all the Loyalists, would return to their own country, sums had been at first issued to them for three months, which being often repeated, were at last converted from quarterly into annual allowances ; but as they had been granted at different periods, on the spur of the occasion, there had crept a considerable degree of disproportion into these allowances, some receiving a great deal more and others a great deal less than their relative situation and circumstances required.”<sup>1</sup>

In September, 1782, John Eardley Wilmot and Daniel Parker Coke, both members of Parliament, were, on the nomination of Lord Shelburne, appointed by the Board of Treasury “To enquire into the cases of all the American sufferers, both of those who already derive assistance from the Publick, and of those who were claiming it ; and to report their opinion to their Lordships.” The object of this inquiry was not to aid the Loyalists, but really to reduce their allowances. Shelburne, in his first letter to Wilmot, asking him to engage in the matter, proves this fact. In it he says, “The sum given to the American Loyalists is become enormous ; some limit is necessary, and a judgment to be formed by some impartial person or persons of their claims. It would give the Board of Treasury great satisfaction if you would undertake it.”<sup>2</sup> The result, according to the commissioners’ final statement of January, 1783, was, that of the 315 persons on the list, all of whom the commission summoned before them, “56 not appearing from absence or other causes,” their allowances amounting to £5,595 per annum, were suspended till their appearance. Of the remaining 259, they found 25 who either were not Loyalists, or did not come within “those principles on which alone this relief was professed to be granted, viz., the being deprived of the means of subsistence by the loyal party they took in the contest, and being thereby reduced to present distress, whose allowances were discontinued. Of the remaining 234 persons, 90 had their allowances diminished, 10 had theirs increased, and the others were left unchanged, and the committee reported “the whole saving, independent of the sus-

<sup>1</sup> Wilmot’s Hist. View, p. 16.

<sup>2</sup> Ibid., p. 17. Note.

pended cases, amounted to £8,295 sterling per annum," thus reducing the annual aid from £34,695 per annum to £26,400 per annum.<sup>1</sup> The principle on which they proceeded was, "that these annual allowances were not intended as compensation for their losses, but as temporary provisions for their support till the close of the war, and until a more solemn investigation could be had."<sup>2</sup> In the spring of 1783 they reported on the fresh claims for allowances of the other loyalists referred to them, of which they examined into the cases of 428 persons. The *number* favorably passed upon is not given, but it is stated that the result was, that in June, 1783, there was an addition to the total annual amount granted of £17,445 per annum, thus bringing it up to £43,245 sterling per annum,<sup>3</sup> a trifle more than the original 315 alone had received.

It must be noted that this aid was all *before the peace of 1783*.

The "Compensation of the Loyalists" for their losses consequent upon the peace of 1783 was a different matter altogether, and was not received till long after that event. The following document issued by the Loyalists whose names it bears, states fully the grounds of their claims upon the British Government for compensation :

#### THE SUMMARY CASE OF THE AMERICAN LOYALISTS.

His Majesty's faithful American subjects, who have sacrificed every thing to their attachment to Great Britain, were called forth to support the cause of their king and the laws of their country, by every motive which can actuate the hearts of zealous citizens, and by those assurances of protection, and even of recompence, which are held the most sacred among mankind.

What the inducements were, under which they acted, will appear from the laws and papers of authority that are now respectfully submitted to the consideration of those, the peculiar province of whom it is to judge of their force, and to give efficacy to the inference, which it is the chief purpose of this Case to draw from them.

The statute of 11 Henry VII. ch. 1. declared, "That, by the common law of England, the subjects are bound, by their duty of allegiance, to serve their prince against every rebellion, power, or might; and that, whatsoever may happen in the fortune of war against the mind of the prince, it is against all law and good

<sup>1</sup> *Ibid.*, 21.

<sup>2</sup> *Ibid.*, 23.

<sup>3</sup> *Ibid.*, 24.

conscience, that such subjects, attending upon such service, should suffer for doing their duty of allegiance."

"Here," says the celebrated Mr. Justice Forster, "is a clear parliamentary declaration, that, by the ancient constitution of England, founded on principles of reason, equity, and good conscience, the allegiance of the subject is due to the king for the time being, and to him alone. This putteth the duty of the subject upon a rational and safe bottom; he knoweth that allegiance and protection are reciprocal duties; he hopeth for protection from the crown, and he payeth his allegiance to it in the person of him whom he seeth in the peaceable possession of it. He entereth not into the question of title; he hath neither leisure nor abilities, nor is he at liberty to enter into that question: but he seeth the fountain, whence the blessings of government flow to him, and there he payeth his allegiance; and this excellent law hath secured him against all after-reckonings on that account." [Crown-Law, 8vo. edit. p. 399.]

At the commencement of the late revolt in 1774, the secretary of state wrote to the American governors, exhorting them to offer every encouragement to those colonists, who appeared in principle adverse to the proceedings of the malcontents; thereby adding, to the declarations of the law, the encouragement of positive promise. [For that Letter, see Parliamentary Register, 1775, vol. I. p. 186.]

It was in pursuance of the laws before-mentioned, that the king issued a proclamation in August, 1775, declaring, "That all the subjects of this realm, and of the dominions to the same belonging, are bound by law to be aiding in the suppressing of such rebellion; commanding all loyal subjects to use their utmost endeavours to withstand such rebellion in the Colonies; and giving assurances, that none ought to doubt the protection which the law will afford to their loyalty and zeal." [This proclamation appeared in the London Gazette of the 24th of August, 1775.]

The royal commissioners, Lord and General Howe, issued a similar proclamation in June, 1776, under the express authority of the act of parliament, 16 George III. ch. 5. declaring, among other assurances, "That due consideration shall be had to the meritorious services of all persons who shall assist in restoring the public tranquility, and that every suitable encouragement shall be given to those who shall promote the re-establishment of legal government." [See Annual Register, 1776.]

The proceedings of parliament, at the repeal of the Stamp-act, being intended as a monitory example for the future, gave encouragement to the Loyalists, equal at least to the foregoing assurances. In February, 1766, the secretary of state proposed a resolve, which was warmly seconded by Mr. Pitt himself, who soon became Lord Chatham, "That the king's subjects, residing in the Colonies, who have manifested a desire to comply with, or to assist in carrying into execution, the Stamp-act, or any other act of parliament, have acted as dutiful and loyal subjects, and are intitled to the favour and protection of this house." [See Com. Journ. 30 vol. p. 603.]

Hence it is reasonable to infer, that the conduct, which was meritorious in the case of a temporary tumult, was much more so in the case of a long rebellion: That, as sufferers from tumults were declared to be entitled to the protection and favour of parliament, so sufferers during the late rebellion are much more entitled

to reparation, from the declaration of law, the king's promise, and the act of parliament, since the risques and services of the Loyalists have been greater, and their losses beyond comparison larger, owing to the confiscations of the American States, for which the treaty of peace provided but a shadow of relief.

It was not less repugnant to the interests than painful to the feelings of the loyal sufferers, at the end of seven years struggle, when they hoped for retribution and repose, to be thrown back into a state of solicitation and suspense, by a treaty which refers them *for recommendation to a body of men, whom, at the instance of the British nation, they have been induced to irritate beyond forgiveness.*

After reiterated persecutions of the objects of the 5th article of the American treaty, after studied delays, the Congress at length recommended it to the observance and fulfilment of the American governments. But what was foretold of the inefficacy of that recommendation has been but too fatally experienced; *for, not one of the States has complied with the recommendations of Congress, as might easily be proved, were not the fact universally acknowledged.*

Common justice requires, that, since the fund of indemnification, which had been assigned by the American treaty, has altogether failed, a more efficient one ought to be provided. It was a prescience, probably, of that failure, and a sense of that justice, which induced the parliament to appoint commissioners to enquire into the Loyalists services and losses, that the truth of both might be made the ground of subsequent proceedings in parliament.

It is unnecessary to cite Grotius or Puffendorf, Burlamaqui or Vattell, to prove a position, which the civilized world admits to be just, that, though the supreme power may relinquish a part of its territory for the benefit of the whole, the injured individual ought to be indemnified for his consequential loss. And this doctrine, which was adopted by the law of nations, because founded in natural equity, was interwoven into the texture of the British constitution, since the indemnification of the few by the exertions of the many is the great foundation of every social system. Hence arose a familiar case in the proceedings of parliament, that, if a road is to be made, or a canal to be cut, the owner of the soil must be paid for his loss. It was only an extension of this common practice, when equivalent value was granted for rights taken away avowedly to promote the general good. The parliament, therefore, gave compensation to the city of Carlisle for the tolls which were abolished by the act of Union between England and Scotland. [Com. Journ. 15 vol. p. 336.] In the same spirit there were voted £152,037 to the proprietors of heritable jurisdictions in Scotland, which were suppressed after the rebellion of 1745. [Com. Journ. 15 vol. p. 408.] When the interests of commerce required that the charter of the African Company should be recalled, £112,142 were voted as compensation. [Com. Journ. 26 vol. p. 408.] And, when a regard to the public revenue demanded that the royal jurisdiction of the Duke and Dutchess of Athol over the Isle of Man should be invested in the crown, their rights were acquired by an agreement to pay the full value, and not by an act of irresistible power. [Com. Journ. 30 vol. p. 225-8.]

Thus the representatives of the people carefully attend to the interests of the individual, when they wish to gain an advantage to the public.

The equity of repairing to the peaceful the damages, which they may sustain from the violence of insurgents, has formed a part of the law of England during

every age. It existed previous to the statute of 1 Geo. I. ch. 5. which subjected every city or hundred to the payment of any *church or house*, that might be either pulled down or damaged within such city or hundred. But this salutary act did not extend to every possible injury that might be done to property. And, in March, 1716, the parliament therefore granted 5579*l.* towards making good the losses sustained by tumultuous and rebellious proceedings in several counties. [Commons Journal, 18th vol. p. 495.] In April, 1725, the parliament, in the same spirit, voted Daniel Campbell 6080*l.* for reparation of his losses, sustained by him, from a riot at Glasgow, on account of his voting in parliament in favour of the malt-tax. [Com. Journal, vol. 20, p. 620.] And the commons conferred a recompence on Charles Dingley for the losses arising from the destruction of his saw-mill by a tumultuous assembly. [Com. Journal, vol. 32, p. 246.] The memorable insurrections of June, 1780, gave rise to an example of an uncommon kind: the injured persons recovered, from the city or the hundreds, for damages done to their dwellings by the mob; but, for losses of other property, the parliament granted the sufferers reparation. And in this manner is the principle established, that, where the law gives the subject no common remedy for his wrong, the legislature is bound to give him peculiar redress.

But, if citizens, who remain tranquil and inactive amidst sedition and tumult, were thus protected and compensated, what patronage is due to those British subjects, who, as much from inclination as encouragement, supported the laws at the hazard of their lives and with the loss of their fortunes; and who, at the requisition of the king and the nation, faced rebellion in arms?

This interesting question may be answered by advertizing to what the parliament has done at different periods, in cases somewhat similar to the hard one which is now under consideration. In 1689, the house of commons addressed the king, requesting his majesty "to appoint a fund of credit for the relief of the Irish nobility and gentry who have lost their estates in Ireland and have fled hither for refuge." [Com. Journal, vol. 10, p. 204-12.] And the house with the same laudable sense of equity, resolved, "that the trustees for the forfeited estates in Ireland shall make satisfaction for the losses sustained at the siege of Londonderry." [Commons Journal, vol. 13, p. 291-3.]

In April, 1708, there were granted by parliament to the sufferers of Nevis and St. Kitt's, for their Losses by the French invasion, 10320*l.* 11*s.* 4*d.* [Com. Journal, vol. 16, p. 109. vol. 17, p. 209-24.] On the petition of Rice, one of the late king James's colonels, stating that, after the capitulation of Limerick, he, *on the encouragement offered him by king William's general*, had brought over his regiment of horse, the house of commons granted him 11420*l.* *as compensation for his eminent services.* [Com. Journ. vol. 15, p. 36, 48, 63.] In 1706, the house of commons, on the petition of Elizabeth Wandsworth, stating, that her husband, on account of his early zeal for king William, in Ireland, *had been condemned as a traitor, and his estate sold*, voted her an annuity out of the Irish forfeitures. [Com. Journal, vol. 15, p. 344.]

By the statute of 1 Geo. I. ch. 44. certain duties were granted to the city of Glasgow, "*as a reward of their duty and loyalty,*" they having sent a battalion to Stirling; in order that others might, by this encouragement, be incited to follow their loyal example. By the 4th Geo. I. ch. 8. the forfeited estates of the

rebels were invested in commissioners for the use of the public, and provision was thereby made, that those loyal persons, whose property had been destroyed by the rebels, should be reimbursed out of their estates. And the house of commons moreover voted "certain overplus and other monies, for relief of those from whom the rebels, in 1715, had extorted money." [Com. Journal, vol. 19, p 54.]

In 1739, the house of commons voted 60000*l.* towards satisfaction to his majesty's subjects for damages sustained by Spanish depredations in America. [Com. Journal, vol. 23, p. 361.] And they voted, to Marret and others, 5000*l.* for the loss of their ship, which had been taken by the Spaniards. [Whitworth's Grants, p. 19.] In 1749, the house granted to the loyal city of Glasgow, 10000*l.* for the same sum, which had been extorted by the late rebels. [Com. Journal, vol. 25, p. 959.]

In 1767, the house of commons voted, to doctor Peter Swinton, 700*l.* for damage done to his estate at Chester during the rebellion in 1745. [Com. Journal, vol. 31, p. 569.]

Such are the laws and facts, the public assurances and parliamentary precedents, on which the American loyalists found their claims. No person has yet said, that they are not cogent ones. And no person has supposed, that the royal promise and the parliamentary resolves have not pledged the nation, in the face of foreign powers, to make good such actual losses as shall appear to have been suffered in consequence of loyalty to the king and attachment to the government.

But, it is suggested by some, that, however just the claim may be, the amount is too large for the ability of the nation. It is surely no objection to the granting of just compensation to real loyalists, because there may be pretended ones. And it is as little a valid reason for withholding payment of liquidated debts because the gross claims may seem large to the eye of prepossession. It was not objected to the punctual payment of the German claims, at the peace of 1763, that they appeared very considerable, before commissioners had stated what sums were really due. Nor did any debtor ever add any thing to his credit, by objecting to the payment of a just debt, that it was a large one. And this objection that they are bulky, was never started by any man, or any party, against the funding of the unfunded debts of the state. It was deemed sufficient that money had been advanced for the public service to induce the people's representatives to ascertain the amount of the sums, and to provide for the payment either of the principal or interest. If this is admitted to be a true rule of determination, it cannot be denied, that the estates, rights, and properties, of the loyal sufferers, which were confiscated on account of their attachment and services to the British government, or which were given as a part of the purchase-money of peace, ought to be much more deemed unfunded debts of the state; because motives of gratitude ought to be superadded to the dictates of justice.

The inability of the nation is a melancholy pretence, which has been suggested at the establishment of every peace since that of 1697; yet, it never prevented the payment or funding of debts, or the renewal of still more expensive wars. In fact, to plead the inability of the nation to satisfy all her debts is to avow to the world that she is bankrupt. That her burthens are great is undeniable, but so are her resources. Does the astonishing industry and traffic of one city, or the splendor of the other, bespeak the inability of the nation? Have the harvests failed; are

the manufacturers unemployed; have the ships been laid up? Is not the exchange, that great criterion of a nation's prosperity and credit, universally in favour of this country? Are not the two great branches of revenue in so improving and productive a state, as that a duty of one per cent. on the annual produce of the excise and customs would most probably be adequate to the interest of the whole liquidated claim?

If such be the affluent condition of this country, and such the claims of the loyalists on its justice, the undersigned agents in their behalf most humbly trust, that no member of parliament will find any difficulty in being of opinion, that their liquidated claims are unfunded debts of the state, which ought to be speedily satisfied or properly secured.

JAMES WRIGHT.  
THOMAS BOONE,  
DUNMORE.  
GEORGE CHALMERS.  
JOSEPH GALLOWAY.  
WILLIAM FRANKLYN.  
GUY JOHNSON.  
GEORGE ROME.  
WILLIAM PEPPEREL.  
PAUL WENTWORTH.<sup>1</sup>

The "Compensation Act" as it was styled, is Chapter 80 of the 23d year of George III., and was passed in July, 1783.<sup>2</sup> It was introduced by Lord John Cavendish, Chancellor of the Exchequer in Shelburne's Ministry, on June 25, 1783, all parties agreeing that such a measure was proper, in the form of a motion for leave to bring in a "Bill for Appointing Commissioners to Enquire into the Circumstances and Former Fortunes of such Persons as are reduced to Distress by the late unhappy Dissentions in America." It gave rise to a considerable debate, the principal subject of discussion being, "whether the Enquiry ought to extend to the different degrees of merit or demerit in the American Loyalists. Lord John Cavendish and Mr. Fox (then Secretary of State), explained the purport of the bill, which they said was not a Bill of Relief, but of Enquiry, in order to ascertain 'who those persons were that were entitled to Relief;' 'a matter not

<sup>1</sup> The above document is a copy of one of the broadsides issued at the time, in the editor's possession. Another broadside, enlarging more fully the points mentioned, was also issued, but is too long to be inserted.

<sup>2</sup> 23 Geo. III., Chap. 80.

more necessary,' Mr. Fox said, 'for the general purpose of voting such relief hereafter, than for the specific purpose of enabling Government to know in what manner they could best negotiate and treat with America for the due performance of the Fifth Article of the Provisional Treaty.' The Bill, therefore, was for the institution of an Enquiry, that all persons claiming relief might be properly classed, and that Government might know under which class individuals stood, in order to ascertain for whom they were bound to treat and negotiate; and for whom they ought to propose relief to the British Parliament: nor did he at all despair of the United States, amply and completely fulfilling the Fifth Article of the Provisional Treaty." At the suggestion of Mr. Wilmot, in order to make Loyalty the test, the title was altered in Committee to "An Act appointing Commissioners to Enquire into the Losses and Services of all such Persons who have suffered in their Rights, Properties, and Professions, during the late unhappy dissensions in America, in consequence of their Loyalty to His Majesty and Attachment to the British Government." And a few days after it "passed without opposition or even debate."

The following is the text of the Act :

Whereas, during the late unhappy Dissentions in America, many of Your Majesty's faithful Subjects have, in consequence of their Loyalty to Your Majesty, and Attachment to the British Government, and their Obedience to Your Majesty's Proclamation, and various other Proclamations and Manifestoes, issued by Your Majesty's Commissioners, Generals, and Governors, suffered in their Rights, Properties, and Professions, insomuch that several well-deserving Persons are reduced from Affluence to Circumstances so straitened as to require the Aid of a temporary Support, which has been allotted to them by the Commissioners of the Treasury, by annual Allowances made, and occasional Assistance by Sums of Money given to them from the Revenues of Your Majesty's Civil List, the amount of which has hitherto been made good by Parliament; and Your faithful Commons, not doubting but that Your Majesty's most earnest Endeavours will be employed for procuring from the United States of America Restitution of or Recompence for the Estates and Effects of those who have thus unhappily suffered, and intending to give all due Aid and Assistance to those who may return to America for the Recovery of their former Possessions under the Provisional Articles, and to extend such Relief to others who may, by particular Circumstances, be deprived of that Advantage, as their respective Cases may require, and the Publick afford; to which End, it is necessary that a diligent and impartial Enquiry should be made

into the Losses and Services of all such Persons as may, within the Time herein-after limited for that Purpose, claim or request such Aid or Relief as is hereby intended to be given : We pray Your Majesty that it may be enacted ; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That John Wilmet Esquire, Daniel Parker Coke Esquire, Colonel Robert Kingston, Colonel Thomas Dundas, and John Marsh Esquire, shall be, and they are hereby constituted Commissioners for enquiring into the respective Losses and Services of all such Person and Persons who have suffered in their Rights, Properties, and Possessions, during the late unhappy Dissentions in America, in consequence of their Loyalty to His Majesty, and Attachment to the British Government.

II. And be it further enacted, That any Three Commissioners in this Act named, before they enter upon the Execution of the same, shall take an Oath before the Master of the Rolls for the Time being, or One of His Majesty's Justices of the Court of King's Bench, Common Pleas, or Barons of the Exchequer, (which they, or either of them, are hereby authorized and required to administer), in the Form following ; that is to say,

*I A. B. do swear, That, according to the best of my Skill and Knowledge, I will faithfully, impartially, and truly execute the several Powers and Trusts vested in me by an Act, (intituled, An Act for appointing Commissioners to enquire into the Losses and Services of all such Persons who have suffered in their Rights, Properties, and Professions, during the late unhappy Dissentions in America, in consequence of their Loyalty to His Majesty, and Attachment to the British Government), according to the Tenor and Purport of the said Act.*

And every other of the said Commissioners in this Act named, shall likewise take the same Oath before the said Three Commissioners, who are hereby authorized and required to administer the same, after they shall themselves have taken the said Oath as aforesaid.

III. And be it further enacted, That it shall and may be lawful to and for the said Commissioners, or any Three or more of them, and they are hereby authorised, empowered, and required, to examine, upon Oath, (which Oath they, or any Three or more of them, are hereby authorised to administer), all Persons whom the said Commissioners, or any Three or more of them, shall think fit to examine touching all such Matters and Things as shall be necessary for the Execution of the Powers vested in the said Commissioners by this Act ; and all such Persons are hereby directed and required punctually to attend the said Commissioners at such Time or Place as they, or any Three or more of them, shall appoint.

IV. And be it enacted by the Authority aforesaid, That the said Commissioners, or any Three or more of them, are hereby authorised to meet and sit, from Time to Time, at the Office of the late Secretary of State for the American Department, with or without Adjournment, and to send their Precept or Precepts, under their Hands and Seals, for any Person or Persons whatsoever, and for such Books, Papers, Writings, or Records, as they shall judge necessary for their Information in the Execution of the Powers vested in the said Commissioners by this Act ; and the said Commissioners, or any Three or more of them, are hereby au-

thorised to appoint and employ such Clerks, Messengers, and Officers, as they shall think meet; which Clerks and Officers are hereby required faithfully to execute and perform the Trust in them severally and respectively reposed, without taking any Thing for such their Service, other than such Salary or Reward as the said Commissioners, or any Three or more of them, shall think fit to direct and appoint in that Behalf.

V. And be it enacted by the Authority aforesaid, That if it shall appear to the said Commissioners that any Person shall have delivered to them an Account or Claim beyond the real Loss, with an Intent to obtain more than a just Compensation, the said Commissioners shall, with all convenient Dispatch, report such Account or Claim, with the Evidence taken thereupon, to the Commissioners of His Majesty's Treasury, who are hereby authorised to make such further Enquiry upon the Case as they shall think proper; and if they, or any Three of them, shall be of Opinion that such Account or Claim is fraudulent, then such Person shall be absolutely excluded from any Compensation or Provision whatsoever.

VI. And be it further enacted by the Authority aforesaid, That in case any Person or Persons, upon Examination upon Oath before the said Commissioners respectively, as before mentioned, shall wilfully and corruptly give false Evidence, every such Person so offending, and being thereof duly convicted, shall be, and is and are hereby declared to be subject and liable to such Pains and Penalties as, by any Law now in being, Persons convicted of wilful and corrupt Perjury are subject and liable to.

VII. And be it further enacted, That no Claim or Request of any Person or Persons for Aid or Relief on Account of the Loss of any Property during the late Dissentions in America, shall be received after the Twenty-fifth Day of March, one thousand seven hundred and eighty-four.

VIII. And be it further enacted, That the said Commissioners shall, from Time to Time, at their Discretion, or as often as they shall be thereunto required, and as soon as possible after the Determination of their Examinations and Proceedings by virtue of this Act, without any further Requisition, give an Account of their Proceedings, in Writing, to the Lords Commissioners of His Majesty's Treasury, and to His Majesty's Principal Secretaries of State for the Time being.

IX. And be it further enacted, That the Lords Commissioners of the Treasury, or Lord High Treasurer for the Time being, are hereby authorized and required to issue and cause to be paid all such Sums of Money, not exceeding Two thousand Pounds, to such Person or Persons as the said Commissioners, or any Three or more of them, shall, by Writing under their Hands, desire or direct, out of any Part of the Publick Monies remaining in His Majesty's Exchequer; which Sum so issued and paid, shall be employed for the Payment of Clerks, Messengers, and other Officers, and in defraying all other necessary Charges in or about the Execution of the Powers of this Act, and in such Manner and in such Proportions, as shall be appointed by the said Commissioners, or any Three or more of them, by Writing under their Hands and Seals in that Behalf; the same to be accounted for, by the Person or Persons to whom the same shall be issued and paid, according to the Course of His Majesty's Exchequer, without any fee or other Charges to be taken on the passing of the said Accounts, other than such Sum as the said Commissioners, or any Three or more of them, shall appoint.

X. And be it further enacted by the Authority aforesaid, That in case of a Vacancy or Vacancies, by Death or Resignation of any One or more of the said Commissioners, during the Recess of Parliament, it shall and may be lawful for His Majesty to nominate and appoint such Person or Persons as He may think proper to supply such Vacancy or Vacancies; and that every Person so nominated and appointed shall be held and considered to be invested with all the same Powers as are delegated to the Commissioners appointed by this Act.

XI. And be it further enacted, That this Act shall continue in Force for Two Years from the passing of this Act, and no longer.<sup>1</sup>

The Commissioners organized in August, 1783, appointed John Forster of Lincoln's Inn, Secretary, and Charles Mouro Assistant Secretary, and began its labors in September of the same year, "by sending to the most respectable and most intelligent of the 'Committee' or 'Agents' of the American Loyalists, and to others from all the Provinces, who could answer general inquiries or facilitate the investigation of each particular claim. Most of these persons were examined separately *viva voce*; others gave their opinions and sentiments in writing." . . . . "but candour and truth oblige the writer to declare that the commissioners met with the utmost honour, veracity, and candour, not only from the Agents of the Committee of Loyalists who were chosen from each Province for their character and abilities, but likewise from many others of the American Loyalists. That there were a few of a different description is not to be wondered at in so numerous a body, and on a subject in which self-interest was so much concerned."

The "Agents" referred to were :

Sir James Wright, Governor of Georgia, First President.  
Sir William Pepperell, Massachusetts, Second President.  
John Wentworth, New Hampshire.  
George Rome, Rhode Island.  
James de Lancey, New York.  
David Ogden, New Jersey.  
Joseph Galloway, Pennsylvania.  
Robert Alexander, Maryland.

<sup>1</sup> Official print of the Act in the editor's possession.

J. R. Grymes, Virginia.  
 Eustace McCulloh, North Carolina.  
 James Simpson, South Carolina.  
 W. Knox, and } Georgia, after the death of Sir James  
                   James Graham, } Wright.

The above Committee of Agents chose as their own Agent to draft and present their formal communications to the Commission and to Parliament, James De Lancey of New York. And in the following Petition presented to Parliament in 1778, he sums up the action and results of the Commission to that time, three supplementary acts having been successively passed in different years extending the period of the existence of the Commission.

TO THE HONOURABLE  
 THE KNIGHTS, CITIZENS, AND BURGESSES,  
 IN PARLIAMENT ASSEMBLED.

*The Petition of the undersigned Agents for the American Loyalists, in behalf of themselves and their Constituents.*

*Humbly sheweth,*

THAT, in pursuance of four several Acts of Parliament, passed in the years 1783, 1785, 1786, and 1787, for appointing Commissioners to inquire into the losses and services of all such persons who have suffered in their rights, properties, and professions, during the late unhappy dissensions in America, in consequence of their loyalty to his Majesty, and attachment to the British Government, the said Commissioners have proceeded in the said Inquiry, and made several reports thereon to the Lords Commissioners of his Majesty's Treasury, as directed by the Said Acts, statements whereof, up to the 5th day of April 1788, have, by order, been laid before your Honourable House.

That, by the Statement made up to the 25th day of December, 1787, the gross sum of 7,067,858*l.* appears to have been claimed for the loss of property only, by 2994 Claimants, of which number not more than twelve have been reported to be fraudulent, seven rejected for want of loyalty, and only 250 disallowed for want of sufficient proof, out of 1724 which they had examined and reported upon, whose Claims had amounted to 6,572,896*l.* as appears by their statement up to the 5th day of April, 1788, but to whom they had allowed no more than 1,887,548*l.* in full compensation thereof, which is not equal to one-third of the amount of said Claims.

And that several of the Claimants, their Constituents, have represented to your Petitioners, that the sums allowed them as Compensation, have been much less than they conceived to be the value of their property thus lost ; and which, in their opinion, had been substantiated by the evidence produced before the said Commissioners. And that they apprehend, the deductions which have been made were in consequence of some general principles or rules adopted by the Commissioners in the investigation of the Claims of the Loyalists with which they are unacquainted, and which they conceive may possibly have been founded on mis-information or mistake.

Your Petitioners trust, that the Commissioners of American Claims cannot possibly have any objection to disclose, in the present stage of the inquiry, the principles and rules which they have formed for their direction in the liquidation of Claims on the justice and liberality of Parliament to the amount of many millions, and in an inquiry so interesting to the public and the individuals affected by their decision.

Your Petitioners therefore pray your Honourable House, that the Commissioners of American Claims be ordered to lay before the House the General Rules and Principles which they have formed for their direction in the inquiry, and under which they have acted in the liquidation of the Claims of the Loyalists.

JAS. DE LANCEY,  
*Agent of the Committee.*

In the first act (of 1785), extending the time of the commission, a clause was inserted authorizing the Commissioners to appoint a person to make inquiries in the United States regarding any of the claims. They appointed John Anstey, a barrister, who spent nearly two years in the United States on this business, who saw personally, and examined the proceedings of, the Commissioners of Forfeitures in the different States, and obtained transcripts of these returns of sales in many cases. The Government declined to allow the Commission to give the grounds and principles on which it made its immense deductions from the amounts claimed, as requested in the above petition to Parliament, and they never were officially disclosed. All that by any possibility of construction could be ruled out as not within the purview of the act they ruled out, and they considered that too much was included in the claims as presented.<sup>1</sup>

The Commission, as a general rule, awarded *a little under one-third of the amount claimed* in each instance. In a few cases more was allowed, but they were very few indeed.

<sup>1</sup> Wilmot's Historical Review intimates that these were the reasons.

On the 9th of June, 1788, the House of Commons adopted the following resolution :—

*Resolved*, That an humble Address be presented to his Majesty, that he will be graciously pleased to give directions, that Pensions be allowed to such persons as have suffered in consequence of their Loyalty to his Majesty, and attachment to the British Government, whose Losses of Income arising from Professions or offices, have been proved to the satisfaction of the commissioners appointed by several Acts made on the 23d, 25th, 26th, and 27th years of his present Majesty's reign, and who are not already adequately provided for, in the proportion of £50 per cent. for every £100 of such annual income not exceeding £400; and of 40 per cent. for every £100 of such income above £400 where the value does not exceed £1,500 per annum in the whole; and where the value does exceed £1,500 per annum in the whole, then in the proportion of £30 per cent. for every £100 exceeding £400 per annum; and to assure his Majesty that this House will make good such expenses as shall be incurred on this account.

The twelfth and last report of the Commission with a "First General Statement" of claims and losses was presented to the House of Commons on the 12th of May, 1789, and on the 12th of June a tabulated "Statement of Claims Made and Losses Liquidated" of the same was laid before the House, brought down to the 10th of June, 1789. Further time for a few special claimants was subsequently given, and it was not till the 25th of March, 1790, that the business was finally closed, and a "General Statement" made up to that date. These three tabulated statements are given below. They are taken, as is the whole information and the quotations in this note, except when otherwise mentioned in the foot notes, from the somewhat rare work entitled, "Historical View of the Commission for Enquiring into the losses, services, and claims of the American Loyalists at the close of the War between Great Britain and her Colonies in 1783; with an Account of the Compensation Granted them by Parliament in 1785 and 1788," by John Eardley Wilmot, M.P., one of the commissioners, published in London, in 1815. It is believed to be the only historical work on this subject that has been written.

**FIRST GENERAL STATEMENT**  
Of Claims made by, and Losses liquidated of, American Loyalists.

| LOSSES OF PROPERTY.  | No. of<br>Claims. | Amount of<br>Claims.      | Losses allowed.          |
|--|-------------------|---------------------------|--------------------------|
| <b>CLAIMS UNDER THE ACTS OF 1783 &amp; 1785.</b>   |                   |                           |                          |
| 1. Loyalists who have rendered Services.....   | 176               | £. s. d.<br>1,904,632 4 0 | £. s. d.<br>640,690 19 0 |
| 2. Loyalists who bore Arms in the Service<br>of Great Britain.....   | 252               | 1,040,506 6 0             | 263,135 6 0              |
| 3. Loyalists Zealous and Uniform.....  | 414               | 1,744,492 18 0            | 531,016 4 0              |
| 4. Loyal British Subjects resident in Great<br>Britain.....  | 31                | 342,139 4 0               | 140,927 0 0              |
| 5. Loyalists who took Oaths to the Ameri-<br>cans, but afterwards joined the British.....                                    | 22                | 137,718 3 0               | 36,530 0 0               |
| 6. Loyalists who bore Arms for the American<br>States, but afterwards joined.....  | 13                | 103,362 19 0              | 26,738 1 0               |
| 7. Loyalists sustaining Losses under the<br>Prohibitory Act, exclusive of others.....  | 6                 | 31,427 1 0                | 14,412 13 0              |
| 8. Loyal British Proprietors.....  | 2                 | 537,854 0 0               | 290,000 0 0              |
| 9. Loyalists, now Subjects or settled Inhab-<br>itants of the United States, some of whom<br>are Persons of great Merit..... | 21                | 51,578 0 0                | 20,077 0 0               |
| 10. CLAIMS DISALLOWED AND WITHDRAWN:   |                   |                           |                          |
| 1. Disallowed for want of Proof of Loy-<br>alty .....  | 5                 | 20,589 10 0               |                          |
| 2. Ditto for want of satisfactory Proof.....   | 189               | 653,819 3 0               |                          |
| 3. Ditto being fraudulent.....   | 9                 | 104,618 15 0              |                          |
| 4. Ditto being for Debts only.....   | 16                |                           |                          |
| 5. Withdrawn .....   | 24                | 145,582 12 0              |                          |
| 11. Loyal British Subjects, who appear to<br>have Relief provided for them by the Treaty<br>of Peace.....                    | 2                 | —                         | 13,270 0 0               |
| N. B. The Amount of the <i>Claims</i> in these<br>two Cases is included in other Classes.                                    |                   |                           |                          |
| 12. Claims presented, but not prosecuted....   | 448               | 959,387 19 0              |                          |
| <b>CLAIMS UNDER THE ACT OF 1788.</b>   |                   |                           |                          |
| 13. Claim of John Penn, jun. and John Penn,<br>sen. Esqrs. (v. Special Report).....  | 1                 | 944,817 8 6               | 500,000 0 0              |
| 14. Ditto of Lord Fairfax (Ditto).....   | 1                 | 98,000 0 0                | 60,000 0 0               |
| 15. Ditto of the Creditors on the Ceded Lands<br>in Georgia (Ditto) .....  | 11                | 45,885 17 5               | 45,885 17 5              |
| 16. Ditto of the other Persons specially named<br>in the Act of 1788.....  | 14                | 77,246 0 0                | 29,977 0 0               |
|  | 1657              | 8,943,657 19 11           | 2,613,260 0 5            |

LOSSES OF INCOME.

| No. of<br>Claims. | Amount of<br>Claims<br>per annum. | Loss of Income<br>per annum<br>found. |
|-------------------|-----------------------------------|---------------------------------------|
| 252               | £. s. d.<br>92,388 0 0            | £. s. d.<br>75,224 0 0                |
| 1                 | 600 0 0                           | 500 0 0                               |
| 15                | 4,683 0 0                         | 3,838 0 0                             |
| 30                | 9,865 0 0                         |                                       |
| 1                 | 894 0 0                           | 800 0 0                               |
| 299               | 108,430 0 0                       | 80,372 0 0                            |

**A STATEMENT OF THE CLAIMS  
EXAMINED BY THE COMMISSIONERS, &c.  
TO THE 10TH OF JUNE, 1789.**

**I. Of CLAIMS made by, and LOSSES liquidated of, AMERICAN LOYALISTS.**

|  | Number of Claims. | Losses of Property.        |                           | Losses of Income.           |                                |
|--|-------------------|----------------------------|---------------------------|-----------------------------|--------------------------------|
|  |                   | Amount of Claims.          | Losses allowed.           | Amount of Claims per Annum. | Loss of Income per Ann. found. |
| Claims examined by the Commissioners in England .....                | 939               | £. s. d.<br>5,893,710 15 0 | £. s. d.<br>1,977,397 3 0 |                             |                                |
| Claims examined by the Commissioners in Nova Scotia and Canada ..... | 1,272             | 975,310 13 0               | 336,753 2 6               | 107,536                     | 79,572                         |
| <b>CLAIMS UNDER THE ACT OF 1788, VIZ.</b>                            | <b>2,211</b>      | <b>6,869,021 8 0</b>       | <b>2,314,150 5 6</b>      | <b>107,536</b>              | <b>79,572</b>                  |
| Claim of John Penn, Junior, and John Penn, Senior, Esquires.....     | I                 | 944,817 8 6                | 500,000 0 0               |                             |                                |
| Ditto of Robert Lord Fairfax, and his Trustees...                    | I                 | 98,000 0 0                 | 60,000 0 0                |                             |                                |
| Ditto of the Creditors on the Ceded Lands in Georgia (Class 12)..... | II                | 45,885 17 5                | 45,885 17 5               |                             |                                |
| Ditto of the other Persons specially named in the Act.....           | 14                | 77,246 0 0                 | 29,977 0 0                | 894                         | 800                            |
| <b>CLAIMS DISALLOWED AND WITHDRAWN.</b>                              |                   | <b>8,034,970 13 II</b>     | <b>2,950,013 2 II</b>     | <b>108,430</b>              | <b>80,372</b>                  |
| 1. Disallowed for want of Proof of Loyalty. 8                        |                   | 22,293 14 2                |                           |                             |                                |
| 2. Ditto, for want of satisfactory Proof of Loss..... 298            |                   | 732,298 0 3                |                           |                             |                                |
| 3. Ditto, being fraudulent..... 10                                   |                   | 106,131 15 0               |                           |                             |                                |
| 4. Ditto, being for Debts only..... 19                               |                   |                            |                           |                             |                                |
| 5. Withdrawn..... 37   | 372               | 152,615 9 2                |                           |                             |                                |
| Claims presented but not prosecuted.....                             | 547               | 1,030,521 19 3             |                           |                             |                                |
| Total.....   | 3,157             | 10,078,831 11 9            | 2,950,013 2 II            | 108,430                     | 80,372                         |

Office of American Claims,  
June 12, 1789.

## II. Of the Sums which have been already GRANTED.

## AMOUNT OF SUMS ALREADY GRANTED BY PARLIAMENT.

| FOR LOSS OF PROPERTY.   | L.        | s. | d. | L.        | s. | d. |
|---|-----------|----|----|-----------|----|----|
| Amount of the Sums granted for Compensation by the Acts of 1785, 1787, and 1788.....  | 1,917,238 | 3  | 0  |           |    |    |
| Amount of Deductions made (pursuant to the Directions of the Act of 1788), from the Losses allowed the American Loyalists.....  | 174,990   | 6  | 0  |           |    |    |
| Amount of Deductions made from ditto on Account of Allowances for Temporary Support...  | 4,787     | 19 | 6  |           |    |    |
|   |           |    |    | 2,097,016 | 8  | 6  |
| FOR LOSS OF INCOME.   |           |    |    |           |    |    |
| Amount of Pensions paid to 211 Persons on account of Losses of Income, pursuant to the Address of the House of Commons of the 9th of June, 1788, per Annum.....           | 27,528    | 0  | 0  |           |    |    |
| N. B. This is exclusive of Annual Allowances for Temporary Support granted to 557 Persons, being chiefly Widows, Orphans, and Merchants, to the Amount of, per Annum..... | 26,526    | 0  | 0  |           |    |    |

## AMOUNT OF WHAT REMAINS FOR CONSIDERATION OF PARLIAMENT.

| FOR LOSS OF PROPERTY.   | Number<br>of<br>Claims. | L.      | s. | d. |                 |
|---|-------------------------|---------|----|----|-----------------|
| Claims which have not participated in the Grant of 1788.....  | 74                      | 138,972 | 11 | 0  |                 |
| Ditto of the Earl of Coventry and Lord Viscount Weymouth, Trustees. See Special Report, Class 8.....  | 1                       | 60,000  | 0  | 0  |                 |
| Ditto of Messrs. Penn's. See Special Report, Class 8.....   | 1                       | 500,000 | 0  | 0  |                 |
| Ditto of Robert Lord Fairfax and his Trustees. See Special Report, Class 8.....   | 1                       | 60,000  | 0  | 0  |                 |
| Ditto of Subjects or Settled Inhabitants of the United States, many of which are Cases of great merit. Class 9.....                                   | 45                      | 34,868  | 6  | 0  |                 |
| Ditto of Persons who appear to have Relief provided for them by the Treaty of Peace, but state the utter impossibility of procuring it. Class 11..... | 2                       | 13,270  | 0  | 0  |                 |
| Ditto of Creditors on the Ceded Lands in Georgia. See Special Report, Class 12.   | 11                      | 45,885  | 17 | 5  |                 |
|   |                         |         |    |    | 852,996 14 5    |
| FOR LOSS OF INCOME.   |                         |         |    |    | £2,950,013 2 11 |
| Amount of Income allowed under the Act of 1788, per Annum £.800.  |                         |         |    |    |                 |

**A General Statement or Summary of the Losses and Claims of the American Loyalists, with the Compensation Granted in respect thereof by the Parliament of Great Britain, at the close of the War between Great Britain and her Colonies in 1782, after a Commission of Enquiry passed in 1783, continued till 1790.**

| Number of Claims.   | Amount.      | Liquidated Claims. | Deduction by Act of Parliament. | Number of Claims for Loss of Profession and Office. | Amount per Annum. | Pensions granted by address to his Majesty. |
|---|--------------|--------------------|---------------------------------|---|-------------------|---|
| 5972  | £. 8,020,045 | £. —               | £. —                            | —   | £. 80,000         | £. —  |
| Claims including those in Nova Scotia and Canada.....   |              |                    |                                 |   |                   |   |
| Claims withdrawn, or not prosecuted .....   | 954          | —                  | —                               | —   | 204               | 25,785                                      |
| Claims examined .....   | 4118         | —                  | —                               | —   |                   |   |
| Liquidated Claims allowed .....   | —            | —                  | 3,292,455                       | —   |                   |   |
| Deduction directed by Parliament.....   | —            | —                  | —                               | 180,000   |                   |   |
| <i>This includes the Claim and Deduction for the Proprietary of Pennsylvania, of the Trustees of Ditto of North Carolina, of Virginia, and of Maryland. The Losses Stated, Liquidations, and Deductions from which, were as follow:</i> |              |                    |                                 |   |                   |   |
| Losses Stated.  | Liquidation. | Deductions.        |                                 |   |                   |   |
| £. 944,000  | £. 500,000   | £. 400,000         |                                 |   |                   |   |
| Of Ditto in Pennsylvania.....   |              |                    | £. 100,000 con-                 |   |                   |   |
| Ditto in Virginia.....  | 98,000       | 60,000             | sidered equal                   |   |                   |   |
| Ditto in North Carolina.....  | 365,000      | 60,000             | to £. 4,000 per                 |   |                   |   |
| Ditto in Maryland.....  | 447,000      | 210,000            | annum.                          |   |                   |   |
| £. 1,854,000  | £. 830,000   | £. 577,000         |                                 |   |                   |   |

N.B. Fractions under £. 1000 to gross sums are not given.

## NOTE LVII.

**THE TREATY OF PEACE OF 1783—THE RATIFICATION AND OFFICIAL RECOMMENDATION BY CONGRESS TO THE STATES OF ITS PROVISIONS IN FAVOR OF THE LOYALISTS IN FULL.**

The Definitive Treaty of Peace and Friendship, between His BRITANNIC MAJESTY, and the UNITED STATES OF AMERICA. Signed at *Paris*, the 3d of *September*, 1783.

*In the Name of the Most Holy and Undivided Trinity.*

IT having pleased the Divine Providence to dispose the Hearts of the Most Serene and Most Potent Prince *George* the Third, by the Grace of God, King of *Great Britain, France, and Ireland*, Defender of the Faith, Duke of *Brunswick* and *Lunenburgh*, Arch-Treasurer and Prince Elector of the Holy *Roman Empire*, &c. and of the *United States of America*, to forget all past Misunderstandings and Differences that have unhappily interrupted the good Correspondence and Friendship which they mutually wish to restore; and to establish such a beneficial and satisfactory Intercourse between the Two Countries, upon the Ground of reciprocal Advantages and mutual Convenience, as may promote and secure to both perpetual Peace and Harmony; and having for this desirable End already laid the Foundation of Peace and Reconciliation, by the Provisional Articles signed at *Paris*, on the 30th of *November*, 1782, by the Commissioners empowered on each Part; which Articles were agreed to be inserted in, and to constitute the Treaty of Peace, proposed to be concluded between the Crown of *Great Britain* and the said *United States*, but which Treaty was not to be concluded until Terms of Peace should be agreed upon between *Great Britain* and *France*, and his *Britannic Majesty* should be ready to conclude such Treaty accordingly; and the Treaty between *Great Britain* and *France* having since been concluded, his *Britannic Majesty* and the *United States of America*, in order to carry into full Effect the Provisional Articles above-mentioned, according to the Tenor thereof; have constituted and appointed, that is to say, his *Britannic Majesty*, on his Part, *David Hartley*, Esq;<sup>1</sup> Member of the Parliament of *Great Britain*; and the said *United States*, on their Part, *John Adams*, Esq; late a Commissioner of the *United States of America* at the Court of *Versailles*, late Delegate in Congress from the State of

<sup>1</sup> *David Hartley*, M.P., was appointed British Minister for the special purpose of signing and exchanging this treaty, by a commission from George III., dated May 14, 1783. See *Political Magazine*, Vol. V., p. 311, for the commission.

*Massachusetts*, and Chief Justice of the said State, and Minister Plenipotentiary of the said *United States* to their High Mightinesses the States General of the *United Netherlands*; *Benjamin Franklin*, Esq; late Delegate in Congress from the State of *Pennsylvania*, President of the Convention of the said State, and Minister Plenipotentiary from the *United States of America* at the Court of *Versailles*; *John Jay*, Esq., late President of Congress, and Chief Justice of the State of *New York*, and Minister Plenipotentiary from the said *United States* at the Court of *Madrid*; to be the Plenipotentiaries for the concluding and signing the present Definitive Treaty: Who, after having reciprocally communicated their respective Full Powers, have agreed upon and confirmed the following Articles:

#### ARTICLE I.

His Britannic Majesty acknowledges the said *United States*, viz. *New Hampshire*, *Massachusetts Bay*, *Rhode Island* and *Providence Plantations*, *Connecticut*, *New York*, *New Jersey*, *Pennsylvania*, *Delaware*, *Maryland*, *Virginia*, *North Carolina*, *South Carolina*, and *Georgia*, to be Free, Sovereign, and Independent States; that he treats with them as such; and for Himself, his Heirs and Successors, relinquishes all Claims to the Government, Propriety, and Territorial Rights of the same, and every Part thereof.

#### ARTICLE II.

And that all Disputes which might arise in future on the Subject of the Boundaries of the said *United States* may be prevented, it is hereby agreed and declared, that the following are and shall be their Boundaries, *viz.* From the North-West Angle of *Nova Scotia*, *viz.* that Angle which is formed by a Line drawn due North, from the Source of *Saint Croix* River to the Highlands, along the said Highlands which divide those Rivers that empty themselves into the River *St. Lawrence*, from those which fall into the *Atlantic Ocean*, to the North-Westernmost Head of *Connecticut* River; thence down along the Middle of that River to the Forty-fifth Degree of North Latitude; from thence by a Line due West on said Latitude until it strikes the River *Iroquois*, or *Cataraguy*; thence along the Middle of said River into *Lake Ontario*; through the Middle of said Lake, until it strikes the Communication by Water between that Lake and *Lake Erie*; thence along the Middle of said Communication into *Lake Erie*; through the Middle of said Lake, until it arrives at the Water-Communication between that Lake and *Lake Huron*; thence along the Middle of said Water-Communication into the *Lake Huron*; thence through the Middle of said Lake to the Water-Communication between that Lake and *Lake Superior*; thence thro' *Lake Superior*, Northward of the *Isles Royal* and *Phelipeaux*, to the *Long Lake*; thence through the middle of said *Long Lake*, and the Water-Communication between it and the *Lake*

*of the Woods*, to the said *Lake of the Woods*; thence through the said Lake to the most North-Western Point thereof, and from thence on a due West Course to the River *Mississippi*; thence by a Line to be drawn along the Middle of the said River *Mississippi*, until it shall intersect the Northernmost Part of the Thirty-first Degree of North Latitude.—South, by a Line to be drawn due East from the Determination of the Line last-mentioned, in the Latitude of Thirty-one Degrees North of the Equator, to the Middle of the River *Apalachicola* or *Catahouche*; thence along the Middle thereof to its Junction with the *Flint River*; thence strait to the Head of *St. Mary's River*, and thence down along the Middle of *St. Mary's River* to the *Atlantic Ocean*.—East, by a Line to be drawn along the Middle of the River *St. Croix*, from its mouth in the Bay of *Fundy* to its Source; and from its Source directly North to the aforesaid Highlands, which divide the Rivers that fall into the *Atlantic Ocean* from those which fall into the River *St. Lawrence*: Comprehending all Islands within Twenty Leagues of any Part of the Shores of the *United States*, and lying between Lines to be drawn due East from the Points where the aforesaid Boundaries between *Nova Scotia* on the one Part, and *East Florida* on the other, shall respectively touch the Bay of *Fundy*, and the *Atlantic Ocean*; excepting such Islands as now are, or heretofore have been, within the Limits of the said Province of *Nova Scotia*.

#### ARTICLE III.

It is agreed, That the People of the *United States* shall continue to enjoy unmolested, the Right to take Fish of every Kind on the Grand Bank, and on all the other Banks of *Newfoundland*: Also in the Gulph of *St. Lawrence*, and at all other Places in the Sea, where the Inhabitants of both Countries used at any Time heretofore to Fish. And also, that the Inhabitants of the *United States* shall have Liberty to take Fish of every Kind on such Part of the Coast of *Newfoundland*, as *British Fisherman* shall use, (but not to dry or cure the same on that Island) and also on the Coasts, Bays and Creeks of all other of His *Britannic Majesty's Dominions in America*; and that the *American Fishermen* shall have Liberty to dry and cure Fish in any of the unsettled Bays, Harbours, and Creeks of *Nova Scotia*, *Magdalen Islands*, and *Labrador*, so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such Settlement, without a previous Agreement for that Purpose with the Inhabitants, Proprietors, or Possessors of the Ground.

#### ARTICLE IV.

It is agreed, That Creditors on either Side shall meet with no lawful Impediment to the Recovery of the full Value in Sterling Money of all *bona fide* Debts heretofore contracted.

## ARTICLE V.

It is agreed, That the Congress shall earnestly recommend it to the Legislatures of the respective States, to provide for the Restitution of all Estates, Rights, and Properties which have been confiscated, belonging to real *British Subjects*; and also of the Estates, Rights, and Properties of Persons resident in Districts in the Possession of His Majesty's Arms, and who have not borne Arms against the said *United States*: and that Persons of any other Description shall have free Liberty to go to any Part or Parts of any of the Thirteen *United States*, and therein to remain Twelve Months unmolested in their Endeavours to obtain the Restitution of such of their Estates, Rights, and Properties as may have been confiscated: and that Congress shall also earnestly recommend to the several States, a Reconsideration and Revision of Acts or Laws perfectly consistent, not only with Justice and Equity, but with that Spirit of Conciliation, which, on the Return of the Blessings of Peace, should universally prevail. And that Congress shall also earnestly recommend to the several States, that the Estates, Rights, and Properties of such last-mentioned Persons shall be restored to them, they refunding to any Persons who may be now in Possession the *bona fide* Price (where any has been given) which such Persons may have paid on purchasing any of the said Lands, Rights, or Properties since the Confiscation.

And it is agreed, That all Persons who have any interest in confiscated Lands, either by Debts, Marriage Settlements, or otherwise, shall meet with no lawful Impediment in the Prosecution of their just Rights.

## ARTICLE VI.

That there shall be no future Confiscations made, nor any Prosecutions commenced against any Person or Persons, for or by Reason of the Part which he or they may have taken in the present War; and that no Person shall, on that Account, suffer any future Loss or Damage, either in his Person, Liberty, or Property; and that those who may be in Confinement on such Charges, at the Time of the Ratification of the Treaty in *America*, shall be immediately set at Liberty, and the Prosecutions so commenced discontinued.

## ARTICLE VII.

There shall be a firm and perpetual Peace between His *Britannic* Majesty and the said States, and between the Subjects of the one, and the Citizens of the other, wherefore all Hostilities, both by Sea and Land, shall from henceforth cease; all Prisoners on both Sides shall be set at Liberty, and His *Britannic* Majesty shall, with all convenient Speed, and without causing any Destruction, or carrying away any Negroes, or other Property of the *American* Inhabitants, withdraw all his Armies, Garrisons, and Fleets from the said *United*

*States, and from every Port, Place, and Harbour within the same;*  
leaving in all Fortifications the *American* Artillery that may be  
therein: and shall also Order, and cause all Archives, Records,  
Deeds and Papers belonging to any of the said States, or their Citi-  
zens, which in the Course of the War may have fallen into the Hands  
of his Officers, to be forthwith restored and delivered to the proper  
*States and Persons to whom they belong.*

## ARTICLE VIII.

The Navigation of the River *Mississippi*, from its Source to the Ocean, shall for ever remain free and open to the Subjects of *Great Britain*, and the Citizens of the *United States*.

## ARTICLE IX.

In Case it should so happen that any Place or Territory belonging to *Great Britain*, or to the *United States*, should have been conquered by the Arms of either, from the other, before the Arrival of the said Provisional Articles in *America*, it is agreed that the same shall be restored without Difficulty, and without requiring any Compensation.

## ARTICLE X.

The solemn Ratifications of the present Treaty, expedited in good and due Form, shall be exchanged between the contracting Parties in the Space of Six Months, or sooner, if possible, to be computed from the Day of the Signature of the present Treaty.

In Witness whereof, we, the undersigned, their Ministers Plenipotentiary, have in their Name, and in Virtue of our Full Powers, signed with our Hands the present Definitive Treaty, and caused the Seals of our Arms to be affixed thereto.

Done at Paris, this Third Day of September, in the Year of our Lord, One Thousand Seven Hundred and Eighty-three.

(L.S.) D. HARTLEY. (L.S.) JOHN ADAMS,  
(L.S.) B. FRANKLIN,  
(L.S.) JOHN JAY.

RATIFICATION OF PEACE BY THE AMERICAN CONGRESS, AND THEIR RECOMMENDATION OF THE LOYALISTS AGREEABLY TO THE FIFTH ARTICLE.

By the UNITED STATES, in CONGRESS assembled,

A PROCLAMATION.

WHEREAS definitive articles, of peace and friendship, between the United States of America and his Britannic Majesty, were concluded and signed at Paris, on the 3d day of September, 1783, by the Plenipotentiaries of the said United States, and of his Britannic Majesty, duly and respectively authorised for that purpose; which definitive articles are in the words following:

And we the United States in Congress assembled, having seen and duly considered the definitive articles aforesaid, did by a certain act under the seal of the United States, bearing date this 14th day of January, 1784, approve, ratify and confirm the same, and every part and clause thereof, engaging and promising that we would sincerely and faithfully perform and observe the same, and never suffer them to be violated by any one, or transgressed in any manner as far as should be in our power; and being sincerely disposed to carry the said articles into execution truly, honestly, and with good faith, according to the intent and meaning thereof, we have thought proper by these presents, to notify the premises to all good citizens of these United States, hereby requiring and enjoining all bodies of magistracy, legislative, executive, and judiciary, all persons bearing office, civil or military, of whatever rank, degree, powers, and all others the good citizens of these States of every vocation and condition, that reverencing those stipulations entered into on their behalf, under the authority of the federal bond by which their existence as an independent people is bound up together, and is known and acknowledged by the nations of the world, and with that good faith which is every man's surest guide within their several offices, jurisdictions, and vocations they carry into effect the said definitive articles, and every clause and sentiment thereof, sincerely, strictly and completely.

Given under the seal of the United States. Witness his Excellency, THOMAS MIFFLIN, our President, at Annapolis, this 14th day of January, in the year of our Lord one thousand seven hundred and eighty-four, and of the sovereignty and independence of the United States of America the eighth.

CHARLES THOMSON, Secretary.

And in compliance with the 5th article of the treaty alluded to in the foregoing proclamation, they resolve unanimously: nine States

present :—"That it be, and it is hereby earnestly recommended to the legislatures of the respective States, to provide for the restitution of all estates, rights, and properties, which have been confiscated, belonging to real British subjects, and also of the estates, rights, and properties, of persons resident in districts which were in possession of his Britannic Majesty's arms, at any time between the 30th day of November, 1782, and the 14th day of January, 1784, and who have not borne arms against the said United States; and that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months unmolested, in their endeavours to obtain the restitution of such of their estates, rights, and properties, as may have been confiscated.—And it is also hereby earnestly recommended to the several States, to reconsider and revise all their acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation which on the return of the blessings of peace, should universally prevail. And it is hereby also earnestly recommended to the several States, that the estates, rights and properties of such last mentioned persons should be restored to them, they refunding to any person who may be now in possession, the bona fide price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights or properties, since the said confiscation.

## I N D E X.



## INDEX.

---

### A.

- A**BEEL, MAJOR, meets Lady Johnson escaping in disguise; his gallant conduct to her, I. 82, 592.  
Abell, Major, arrests Thomas Jones, II. 295.  
Abercrombie, Colonel, advises to take the Americans in the rear at Bunker's Hill, I. 51.  
Abercrombie, General, Oliver De Lancey commands New York Provincials under, I. 156; defeat of, II. 367.  
Abingdon, Earl of, marries a daughter of Sir Peter Warren, I. 158.  
Acadians, plundered by Major Fry after the taking of Beausejour and fly to Canada, II. 308; utter destruction of their villages by the New England troops, 309; are transported and scattered through the British Colonies, 310; case of the neutral French, 313, note on the, 574; a Massachusetts officer and his troops confine them in the church at Grand Pre, 575; the oaths they refused to take, 576; numbers transported, 577.  
Ackland, Major, wounded and taken prisoner, I. 207.  
Act of Attainder, John Morin Scott framer of, I. 5; discussed, II. 269; names of persons included in, *ibid.*; compared with Scotch and Pennsylvania Acts of, 274; contrary to British precedents, 275; date of, 277; inspired by revenge, 280; included Episcopalian only, 281; why certain persons included, 290; clause applying to them, 291; aimed at the friends of the De Lanceys, *ibid.*; an ex post facto law, 292; text of, in full, 510; drawn by John Morin Scott, 524; result of Sir James Jay's revenge on the Governors of Kings College and the names of those of them inserted, 525; official account of the legislative action upon, 526; vetoed by Council of Revision and defeated, 532; veto drawn by Robert R. Livingston, 534; reintroduced and finally passed, 537; John Jay writes Governor Clinton that New York is disgraced by it, 538.  
Act for settling a ministry in New York, etc., passed, I. 7; denounced by the Whigs, *ibid.*; full text of, 393; partially enforced, II. 128.  
Act, Trespass, provisions of, II. 149; discussed, 251-254; when passed, 503; where found, 504.  
Adams, John, Commissioner to conclude a treaty of peace with Great Britain, II. 237; his descriptions of Franklin and Jay, 480; his account of the final sessions of the Commissioners, 499.  
Adams, Samuel, congratulated on his escape from capture by the Royal army, I. 46.  
Address to the betrayed inhabitants of New York, I. 426.  
Adriance, George, remarkable incident illustrative of the severity of the winter of 1779-80, related by, I. 321.  
Albany, Abraham TenBroeck elected Member of Assembly for, I. 17; Philip Schuyler Member of Assembly for, 36; Philip Schuyler Member of Continental Congress from, 39; treaty of Continental Congress with Indians at, 573; Colonel Bradstreet builds a splendid mansion near, and presents it to Mrs. Schuyler, II. 317; General Stirling dies in, 324.  
Aldermen and Assistants of New York in 1776, names of, II. 419.  
Alexander, James, father of Lord Stirling, sketch of, II. 320; insists on a share of the grant to Lachlan Campbell, 353.  
Alexander, William, member of the Whig club, I. 6; his pass and rudeness to Mrs. Jones, 104; self-styled Earl of Stirling, particulars respecting him and his title, II. 579.  
Allen, Andrew, delegate to Congress, abandons the American cause, joins the Howes in 1776, finally retires to England, and is pensioned, I. 84.  
Allen, Margaret, marries James de Lancey, I. 154.  
Allen, William, Chief Justice of Pennsylvania, his daughter marries James de Lancey, I. 154; father-in-law of Governor John Penn, 326.  
Alsop, John, delegate to Congress, loved

- bishops and kings, I. 35; delegate to 2d Continental Congress, 38.  
 Amberman, a miller, murdered for asking payment of a debt, II. 92.  
 America, prophecy of the Independence of, I. 24.  
 America, generals and governors supposed it could be conquered by proclamations, II. 173.  
 American Whig, the, published weekly, I. 19; names of contributors to, 20, 21.  
 Americans, their loss at Germantown, I. 195.  
 Amherst, Gen'l Sir Jeffery, General Murray forms a junction with, II. 311; Sir William Johnson attended to Montreal, 370.  
 Anderson, Rev. James, called to the Presbyterian Church in New York, II. 390.  
 Anderson, John, Major André, so-called in the pass given him by Arnold, I. 373.  
 André, Captain, one of the knights at the Mischnanza, I. 245.  
 André, Major, sent to arrange with Arnold for surrender of West Point, I. 371; arrested, 373; hanged, 377; last words of, 381; eulogium on, 382, Note LXXV. on 730; Joshua Hett Smith's connection with, 385, and his trial, 744; André's captors, 731; their bad character, 733; did he land under the sanction of a flag? 740; his family, 744.  
 Annely, Mr., enters into partnership with Francis Lewis, II. 357; a Bristol tradesman, 628; brother-in-law of Francis Lewis, and newspaper controversy with, *ibid.*; his "instructions for counsel" in suit with Lewis, 629-637.  
 Antill, Edward, donates £1,800 to the New York College, I. 10.  
 Antill, John, dismissed the service for embezzlement, and afterwards reinstated, II. 29; son-in-law of Alexr. Colden, *ibid.*  
 Aphorpe, Charles Ward, indicted for high treason, I. 151; Miss de Lancey and Miss Floyd received at the house of, 186; a sinecurist, salary of, II. 162.  
 Arbuthnot, Admiral, fleet under, assists at the siege of Charleston, I. 99; the French fleet elude, 358; blockades the French at Rhode Island and calls for reinforcements, 359; refuses to hold a conference with General Clinton and puts to sea, 360.  
 Armstrong, — Micah Williams arrested by an officer named, II. 85.  
 Arnold, General, despatched to the relief of the American posts at the Cedars, I. 92; American prisoners delivered to, 93; defeated on Lake Champlain, blows up his vessels, 133; alleged to have been crazy in the battle of Saratoga, 134; has his horse shot under him whilst pursuing Tryon at Danbury, 178; accompanied to Quebec by Major Meigs, 181; attached to the army under Gates, 201; wounded, 207; marches to the relief of Fort Stanwix, 218; marches against Quebec, 310; account of his treason, 370 *et seq.*; his reward, 374; particulars respecting, 375; note on treason of, 730; Sir Henry Clinton's MS. account of the treason, 737; his family, his wives, and descendants, 746; Robert G. Livingston's son an officer in corps of, II. 47; his operations in Virginia, 177; Lafayette sent against, 178; returns to New York rich with plunder, 179; strength of the force in Virginia under, 191; offers to prevent the junction of Rochambeau with Washington at White Plains, 203; is sent to New London, 205; plunders and burns the town, 206; with others called on by Pennsylvania to surrender or be attainted, 274; motive for his treason, 333; his expedition to Virginia, 462.  
 Arrows, African, description of, II. 379.  
 Articles preliminary of peace, abstract of the, II. 238.  
 Asgill, Captain, designated by lot to be executed in retaliation for the murder of Lieutenant Huddy, II. 232; treatment of, 233; released and returns to England, 234; note on his case, 483.  
 Asgill, Lady, procures the interposition of the Queen of France in favor of her son, II. 234; Sir James Jay suggests the application, 486.  
 Asgill, Sir John, banker, his son designated to be executed, II. 232.  
 Asia. H. M. ship, Governor Tryon retires on board the ship Duchess of Gordon, not on board the, I. 62, 560.  
 Assembly, David Jones, Speaker of the, I. 13; dissolved by death of the King, 17; dissolved under the Septennial Act, 18; again dissolved, 19; refuses to approve proceedings of Continental Congress, 36; names of members voting to refuse, 37; the denounces granting the judges' commissions "during pleasure," 229; refuses to vote them permanent salaries, 230; in 1774, official proceedings of, 490; of 1775, official proceedings of, 506; of 1775, petition to the King, 533; memorial of, to House of Lords, 536; remonstrance of, to the House of Commons, 539.  
 Association formed in New York to oppose the measures of the British ministry, I. 42; names of persons who signed the, 43, 44; text of the document, 505.  
 Associated Loyalists take Lieutenant Huddy out of the provost and hang him, II. 227; what the organization was and its objects, 481.  
 Attainder, Act of, passed against those who adhered to the Crown, I. 150; law of, fully discussed, 269-294, II. 145; New York Act of, 510; history of its origin and passage, 524-539.

- Attainder.** (See *Act*).  
d'Aubrey, M., marches to the relief of Niagara, II. 368; defeated, 369.  
Auchmuty, Miss, represented by Lord Cathcart at the Mischnanza, I. 244.  
Auchmuty, Rev. Samuel, brother-in-law of Chief-Judge Pratt, I. 228; dies of a broken heart, *ibid.*  
Axtell, Colonel, pockets proceeds of fines imposed by him, I. 348.
- Axtell, Daniel, Sr., a regicide, emigrates to Jamaica, I. 306; leaves his son William a fortune, *ibid.*; Daniel Cromwell, juror, on his trial, 309.  
Axtell, William, attainted, I. 151; commissioned colonel of a Loyalist regiment, 304; its strength and his services, 305; particulars respecting, 306-309; his attainder, II. 269, 285; signs petition for revival of Civil Law, 117.

## B.

- BADELY,** Mrs., Sir Henry Clinton walls in the arms of, I. 349.  
**Bahamas,** Loyalists remove to the, II. 235.  
**Baker,** Remember, and others surprise Fort Ticonderoga, I. 47; outlawed, 49; Congress passes a vote of thanks to, 50; killed, 51.  
Baldwin, Joseph, property belonging to, ordered seized, II. 38.  
Ball, Cornelia, harsh treatment of, II. 61.  
Barclay, Thomas H., attainted, II. 269.  
Barker. (See *Baker*.)  
Barnegat plundered and burned, I. 287.  
Barrack-Masters pocket the rent for buildings taken for military use, I. 337; Quarter-Masters, and Commissaries, robberies committed by, 338, 555; II. 142, 455; their names, *ibid.*  
Barrack-Masters. (See *Commissaries*.)  
Battle of Lexington, news of the, received in New York, I. 39, 487; note on the, 552; of Bunker's Hill, 51; note on, 551; Burgoyne's views on, 554; of Long Island, loss of the Americans at the, 256; size and condition of the two armies previous to, 110, 112, 599; of White Plains, 123, 621.  
Baum, Lieutenant-Colonel, ordered to attack Bennington, I. 204; killed, 205, 683.  
Bayard, Nicholas, John Van Rensselaer's son marries a daughter of, II. 319.  
Bayard, Robert, Judge of Court of Admiralty, II. 104; attainted, 269.  
Bayard, Samuel, Jr., fails in his application to take the oath of allegiance to the State, I. 146; appointed Secretary of the province, II. 16; lists of rebels' estates to be delivered to, 17; his fees of office exorbitant, 19; construction put on the Prohibitory Act by, 52, 129; never suggested the payment of the city revenues to the City Treasurer, 55; abuse of the order respecting rebel estates by, 66; of opinion that all the colonists were out of the protection of the Crown, 98; receives fees of Prerogative Court, 104; illegal proceedings of, 138.  
Bayard, William, cousin of Philip Livingston, elected Member of Assembly for New York, I. 17; attainted, II. 269;
- his case considered, 288; Colonel, his property at Hoboken burned, 308.  
Bayeau, Thomas, Assistant Wharfinger, his salary, II. 163.  
Baylor, Mr., commands "Mrs. Washington's Own" regiment, I. 286.  
Beacon-fires placed around the island of New York, I. 349.  
Bellamy, Rev. Joseph, declines a call to New York, II. 394.  
Bennington, attack on, I. 204; British defeated at, 205; why, 682; Peters's account of, 684; numbers engaged and numbers killed and taken at, 685.  
Berkeley, Dean, library presented by him to Yale College plundered by the British, I. 138.  
Billop, Christopher, member of New York Assembly, votes against approving proceedings of Continental Congress, I. 37; signs petition for revival of Civil Law, II. 117; Superintendent of police on Staten Island, salary of, 162; attainted, 269; why attainted, 281; his case considered, 288.  
Birch, Colonel Samuel, robs Dr. Tredwell of his horse, I. 115; illegal conduct of, II. 151.  
Birch, General, sends out a marauding party, I. 324; their exploits, *ibid.*; result, 325; frauds connived at by, 341; city commandant, occupies house of Samuel Verplanck, II. 67; has two country seats on Long Island, 68; of 17th Light Dragoons, seizes Mr. Pintard's property at Hempstead, 70; also his furniture, 71; five gross instances of plundering by, 72-75; as commandant of the city, imprisons a man for being seen in bad company, 87.  
Bird, Colonel, destroys American supplies at Peekskill, I. 177.  
Bloomingdale, General De Lancey's house at, plundered and burned, and the ladies of his family barbarously treated by the Americans, I. 185.  
Blundell, Christopher, notice of, I. 349; Sir Henry Clinton entertains the daughters of, *ibid.*  
Blundell's house being in Fort George, reserved to the Crown by Charter of New York, II. 137.

- Board of Commissioners established to enforce payment of Loyalist debts, II. 125; had no power to enforce payment of mortgages, 126.
- Boerum, Simon, delegate from Kings County to 2d Continental Congress, I. 38.
- Bogardus, Anneke, Livingstons interested in the suit against Trinity Church for recovery of land granted to, I. 10.
- Bolingbroke, Lord, attainted, II. 275.
- Bond, Miss, one of the ladies of honor at the Mischianza, I. 245, 247.
- Books of public libraries in New York, plundered and sold by British soldiers, I. 136, 137.
- Booth, Dr., superintendent of hospitals, opposes the restoration of the "Brick Church" to Presbyterians, II. 3; retains it as a hospital, 9.
- Boscawen, Admiral, cattle belonging to the Acadians seized for fleet of, II. 309.
- Boscawen, Captain, one of the squires at the Mischianza, I. 246.
- Boston, sloop seized in New York loaded with provisions for, I. 39; artillery captured at Ticonderoga used at the siege of, 50; evacuated, 53; greatly plundered by the British, 54; Quarter-Master-General Wm. Sheriff's share, *ibid.*; plunderings of the British in, note on, 555.
- Bostwick, Rev. David, called to New York, II. 394.
- Braddock, General, killed, II. 321; Washington fights under, 346.
- Bradstreet, Colonel, appoints Philip Schuyler his deputy, II. 316; makes Mrs. Schuyler a present of a beautiful mansion, 317.
- Brandywine, Washington defeated at battle of the, I. 189, 191; his army "would have been spoken of no more" had the British followed up their advantage at, 197.
- Brant, Captain, fails to make any impression on General Sullivan's invading army, II. 333.
- Brant, Mary, Sir William Johnson's provision for his natural children by, II. 375.
- Brewster, George, colonel of the second battalion of "De Lancey's Loyalists," I. 265.
- Breyman, Lieut.-Colonel, detached to support attack on Bennington, I. 204; forced to retreat, 205; killed, 207; his statement of his force, II. 686.
- Brindly, George, commissary of forage, I. 343; a Bostonian, character of, 345; neglects to remove forage from Long Island, which is afterwards destroyed, II. 34.
- Brinkerhoff, Dirck, elected Member of Assembly for Dutchess County, I. 18.
- Briscoe, Lieutenant, one of the esquires at the Mischianza, I. 247.
- Brookhaven, Lieut.-Colonel Hulet in command of a fort at, I. 266.
- Brookland, battle of, and defeat of the Americans at, I. 112; Colonel Cornell drives off cattle, horses, etc., into, 111; churches at, and in other places on Long Island converted into barracks by the British, 337; independence on Long Island destroyed by battle of, II. 168.
- Brooks, Dr. David, carried prisoner to Philadelphia, I. 68; released, 69.
- Brooks, Lieutenant Edward, states that Arnold was crazy at the battle of Saratoga, I. 134.
- Brower, Cornelius, institutes a suit against Trinity Church for recovery of land in New York, I. 9; loses suit, and has to pay costs, 10.
- Brown, Colonel, defends Augusta, II. 380.
- Brown, Lieutenant, esquire at the Mischianza, I. 245.
- Brownlow, Captain, esquire to Lord Cathcart at the Mischianza, I. 244.
- Brudenell, Rev. Mr., performs the funeral service at the burial of General Frazer, I. 209.
- Bunker's Hill, account of the battle of, I. 51; General Burgoyne's comments on, 554.
- Burgoyne, General, will have very little to do if the British possess the North River, I. 189; ordered to proceed from Canada against New York, via Lake Champlain, 198; proceeds successfully to Ticonderoga, 199; goes to Skeneborough instead of to Lake George, 200; his excuse for not going by way of Lake George, 201; the real reason the advice of Colonel Skene, who wanted a road cut through his estate from Skeneborough (Whitehall) to Fort Edward, *ibid.*; full description of his campaign and his battles, 200-207; surrenders to General Gates at Saratoga, 208; his orders, *ibid.*; he writes to Lord George Germaine from Ticonderoga, 210; complains to the authorities at Boston of the violation of the Saratoga Convention, 211; Congress deliberately violate the Convention of Saratoga with, 213-214 (see note LXII. p. 698, for its official action); statement of the relative forces of his army and that of the Americans at the commencement of his campaign and at his surrender, 674-680 (note LIX.); who he was, 681; primal, secondary, and proximate causes of his failure, 682; his insulting treatment of and charges against the provincials in his army, and a "defence" of them, 683, 684; numbers in the Bennington affair, 685; Colonel John Peters commands Canadian Provincial under, *ibid.*; who Peters was, 686; Peters's memorial to the Lords of Trade on the Burgoyne campaign, 687; letter of

- S. Peters accompanying the same, 689; official orders to Peters, 690; official permission to Peters and other officers to escape to Canada on the eve of the surrender, he not having given them their commissions, 691; Howe's orders to co-operate with Burgoyne forgotten to be sent by Lord George Germaine, and found in London after the latter's surrender, 695; scene of his surrender, II. 315.
- Burke, Edmund, correspondent of Dr. Franklin, one of the new ministry, II. 221; peace the bantling of, 262.
- Burnet, Captain, encounters the French fleet under De Ternay, II. 178.
- Burr, Aaron, saves Silliman's brigade from capture on Sept. 15, 1776, I. 608; conversation of Benj. D. Silliman with, *ibid.*; his intention and preparations to write a history of the Revolution, and his views of the real actors therein, 609.
- Burr, Thaddeus, member of the Council, Connecticut, II. 301.
- Butchers of New York laid under contribution by Mayor Matthews for his personal benefit, II. 23.
- Butler, Colonel John, retires to Canada, I. 216; attainted, II. 269; fails in his attack on General Sullivan, 333; his striking opinion of the general's Indian campaign, 334; biographical sketch of, 337; commands, under Sir Wm. Johnson, the Indians in the Niagara campaign in 1759, and also in Montreal expedition in 1760, 339; deputy superintendent (during the war) of Indian affairs, *ibid.*
- Butler, Lieutenant, came to N. Y. in 1711, a near relative of the Ormond family, II. 337; biographical sketch of, 338; dies in 1760, near 90 years old, *ibid.*; father of Colonel John and Captain Walter Butler, *ibid.*
- Butler, Captain Walter, son of Lieutenant Butler, killed at the battle of Lake George in 1755, II. 339.
- Butler, Lieutenant Walter, son of Colonel John, killed in 1781 in a skirmish, II. 339.
- Butler, William, a poor clerk in Commissary-General's office in New York, retires to England in 1781, with a fortune made during the war, I. 336.
- "Butler's Purchase," Lieutenant Butler, father of Colonel John, with Governor Cosby's relatives and friends patentees of, II. 337.
- Bygrove, Lieutenant, one of the knights at the Mischianza, I. 245.

## C.

- CADJOE, Major, lands on Staten Island with Virginia refugees and negroes, I. 103.
- Caldwell, Rev. Mr., sent to gain the Regulators over to Congress, II. 8; Commissary, killed, *ibid.*
- Calvinists in New York, I. 2.
- Camden, S. C., fortified, I. 353; battle of, 386.
- Campbell, Captain, esquire at the Mischianza, I. 247; leads a sortie from Fort Ninety-Six, II. 382.
- Campbell, Colonel of Highlanders, taken prisoner with his men, I. 54; sent to Georgia, 89; made a hostage for General Lee, 173; description of his place of confinement, 174.
- Campbell, Donald, half-pay officer, participant in movement in New York on news of the battle of Lexington, I. 39; calls on Eastern delegates, 46; biographical sketch of, II. 352.
- Campbell, General, ordered to Georgia, I. 267.
- Campbell, George, notice of, II. 354.
- Campbell, Lachlan, biographical sketch of, II. 352.
- Campbell, Rev. Mr., notice of, II. 355.
- Canada, preparations for an expedition against, I. 58; Montgomery's expedition into, 309; mission from Congress to, 595; loyalists remove to, II. 235; reduced, 371; Americans burn houses, mills, etc., on their retreat from, 308; Acadians fly to, 309.
- Cape Breton, General Pepperell leads an expedition against, I. 178.
- Carleton, General, defeats Americans near Three Rivers, I. 89; treats prisoners with humanity, 90; punishes plunderers, 91; demands the prisoners taken at St. Johns, 93; drives the Americans out of Canada, 132; defeats them on Lake Champlain, 133; humane treatment of American prisoners by, 133; returns to Canada, 134; treats with humanity the Americans taken at Quebec, 181; sends them to their several homes, 182; outranks Burgoyne, 198; dissatisfied because he was not to command the expedition against New York, 199; defends Quebec against Montgomery, 310; stops the erection of useless fortifications on New York island, 350.
- Carleton, Sir Guy, Governor of Canada, commissions Sir John Johnson to raise two regiments, I. 75; President of the Commission of Accounts, 334; puts a stop to plundering by quarter-masters, etc., 336; discovers and puts an end to frauds by public officers, 341; appointed Commander-in-Chief in America; arrives in New York, II. 122; releases

- political prisoners, 223; takes Howe's proclamation establishing Court of Police as a precedent, 124; gives no protection to Loyalist creditors, 125; William Smith, who hated the Loyalists, his adviser, 126; dismisses a horde of office-holders, 127; required to deliver up the executioner of Lieutenant Huddy, 229; refuses to comply, 230; remonstrates with Congress in favor of the Loyalists, 244; prepares for the evacuation of New York, 259; evacuates the city, 260; character of, 262; Loyalists apply to, 265; issues a commission to ascertain amount of debts due Loyalists, 266; a blot on his character, 267; sends all the American prisoners home, 343; his "hostilities" to British corruption in New York, 480.
- Carlisle, Mr. Abraham, arrested for treason by Americans, I. 282; hanged, 283; note on case of, 724.
- Carlisle, Earl of, one of the Royal Commissioners, I. 160; his proclamation treated with contempt, II. 173.
- Carolina, South, the British driven out of, I. 354.
- Carroll, Rev. Mr., sent as a Roman Catholic to Canada to gain over the inhabitants to the American cause, I. 92, 595.
- Carroll, Charles, of Carrollton, one of the Commissioners to gain over the inhabitants of Canada to the American cause, I. 595.
- Carryer, Green, swears against two respectable farmers of Oyster Bay, I. 323; rewarded, 325.
- Case of Thomas Jones, II. 295.
- Cathcart, Hon. Captain, Knight at the Mischianza, I. 245.
- Cathcart, Earl of, volunteers to serve on board Lord Howe's fleet, I. 274; chief of one section of the Knights at the Mischianza, 244.
- Cedars, American post captured at, I. 92; Congress refuses at first to ratify, but finally confirms the treaty concluded at, 94.
- Chamber of Commerce exercises its functions whilst the British occupied New York, II. 53; its loyalty during the war, 421.
- Chambers, John, member of the Council, I. 12; puisne judge of Supreme Court, 221; particulars respecting, 222; desires to be chief-justice, 223; why he was not appointed, 224; resigns, 227.
- Chainier, commissary, said to have a share of the proceeds of the sale of Loyalist property, I. 117, 118; other perquisites of, 119.
- Charleston, S. C., British force moves against, I. 98; it fails to reach, 99; city subsequently invested by Admiral Arbuthnot, 99; offers to surrender on terms of neutrality, 290; siege of raised, 291; surrendered to Sir Henry Clinton, 353; British half starved in, 354; British cooped up in, II. 188; evacuated by the British, 234; savagely cruel treatment of the Loyalists at the evacuation of, 236.
- Charlestown, Mass., burned, I. 51, II. 307.
- Charlotte Co., William Duer delegate to Continental Congress from, I. 39.
- Charter of King's College, granted by Governor de Lancey, violent opposition to the, I. 12, 415, 416.
- Charter of City of New York granted, II. 48; provisions thereof, 49; confirmed by the Legislature, 49; why suspended during the British occupation of the city, 52; declared void, 54; said to be void, 126; revenues raised under, sequestered, 127; provisions of, only partially abrogated, 128, 135; powers and privileges conferred by, 136; properly reserved to the Crown by, 137; Court of Record established by, 138.
- Chastellux, Marquis de, mistakes of, II. 317, 318; his remarks on Lord Stirling, 324; on Gov. George Clinton, 330.
- Chew, Joseph, retires to Canada, I. 216.
- Chew, Miss, one of the ladies of honor at the Mischianza, I. 245.
- Chew, Miss S., one of the ladies of honor at the Mischianza, I. 247.
- Chew, Mr., British take possession of the stone-house of, at Germantown, I. 194.
- Chichester, one, leads a party of rebels in a raid on Long Island; is taken prisoner and released, I. 294.
- Child, Captain, engaged with the French fleet under De Ternay, II. 178.
- Church, Dutch, The, I. 21-23; its origin and history, 418-424.
- Church, Episcopal, a valuable tract of land in New York granted to, I. 8; suit instituted for recovery of, 9.
- Church, New Brick Presbyterian, converted into an hospital, II. 2; plan of British high officials in the midst of the war for its restitution, 3; plan opposed and dropped, 9, 389.
- Church, Presbyterian, in New York, I. 2; origin and history of, II. 390-397.
- Church, Trinity, its origin and history, I. 8, 397-413.
- Churches, British burn and destroy, I. 140.
- Churches converted into barracks by the British, I. 337.
- Churchwardens, City, how chosen, and their duties, I. 395; names of the first in 1694, 396; names of those in office in 1776, II. 418, 420; of Trinity Church, how chosen, their duties, and names of the first in 1697, I. 397.
- City Funds, what they were, their amount, and how squandered, II. 143-154, 458-460.
- City Hall, arsenal in, broken open and the arms taken off, I. 40; broken open

- and plundered by British soldiers, 136; General Lee confined in, 173.
- Civil law, how it came to be abolished considered, II. 133; in force in New York under Washington, 135; good effects which would follow the re-establishment of, 159.
- Civil Vestry, what, I. 395; and Church Vestry, what, 396, 397.
- Clarke, Captain, takes Fort Sackville, Illinois, I. 317.
- Clarke, George, his bad faith towards Lachlan Campbell, II. 352.
- Clarke, Sir James, mortally wounded and taken prisoner, I. 207.
- Clarkson, David, II. 305; not included in Act of Attainder, 306.
- Classis of Amsterdam, Dutch Church in New York dependent on, I. 2.
- Claus, Colonel Daniel, retires to Canada, I. 216; attainted, II. 269, 283; marries a daughter of Sir William Johnson, 374.
- Clinton, Charles (father of Gov. George, and Gen. James), origin, and biographical notice, of, II. 325.
- Clinton, George (Br.), Governor of Province of New York, relative of the Duke of Newcastle and Earl of Lincoln, I. 1; holds back Lieut.-Governor de Lancey's commission six years, 155; succeeded by Sir Danvers Osborne, 156.
- Clinton, George (N. Y.), re-elected to the Assembly, I. 19; delegate to Second Continental Congress, 39; first Governor of State of New York, made a rebel by William Smith, 148; his opinion of William Smith, *ibid.*; Joshua Hett Smith sends information of the strength of the British at New York to, II. 209; lays before the Legislature papers respecting application of Vermont to return to its allegiance to the King, 211; biographical sketch of, 325; Marquis de Chastellux's statement respecting, 325; notice and character of, 590.
- Clinton, General Sir Henry, retires from Boston and proceeds to North Carolina, I. 97; thence goes to Charleston, 98; fails to co-operate with the fleet under Admiral Parker, and expedition abandoned, 99; joins General Howe on Staten Island, 103, 110; urges General Howe to pursue the American army after their defeat at Long Island, 112; reduces Rhode Island, 129; goes to England to challenge Lord George Germaine, 131; why created Knight of the Bath, and thanked by Parliament, 132; attainted, 150; foraging expedition under, 197; reduces the forts in the Highlands, 218; ill consequence of the recall of part of the force under, 219; returns to New York, 220; his MS. account of his Hudson River expedition, why undertaken, and why abandoned, 704; succeeds General Howe in command of the British forces, 239; assures the Loyalists that the war was to be vigorously continued, 240; attends the fete of the Mischianza, 242; evacuates Philadelphia and marches through New Jersey, 262; loses 1,500 men on the march, 263; arrives at New York, 264; arrives at Rhode Island after Sullivan had retreated, 277; returns to New York, 278; failed to complain of the murder of Mr. Richards by the Americans, 281; or to intercede for Carlisle and Roberts, two loyal Quakers, hung in Philadelphia, 283; censured for not interfering, 284; deserving of death for such neglect, 285; wrongfully exchanges Phillips and Smith, of Suffolk County, 293; orders the army to move up the North River, 311; retires to New York, 313; his character, 315; why he ordered Rhode Island evacuated, 316; absent-mindedness of, 317; sends an "alert" to seize the person of General Washington at Morristown, 318; sails for Charleston, S. C.; his character, 319; proceeds through New Jersey to New York, 333; frauds connived at by, 341; fortifies Long Island anew, 347; measures he adopted for defence of New York "whilst he wallowed in the arms of Mrs. Badely," 349; reduces Charleston, 353; returns to New York, 355; recalls Knyphausen from New Jersey, 356; lays waste Westchester County, 357; Admiral Arbuthnot calls on him to assist in capturing the French forces at Rhode Island, 358; trifles with the Admiral, 359; who refuses to confer with him, 361; goes into winter quarters, 362; orders a farm map of all Long Island to be made, 365; the supposed object of the map, *ibid.*; makes no movements against General Washington, 366; William Smith adviser of, 368; Arnold negotiates with, 370; endeavors to save Major André's life, 376, 377; scathing letter to, 377-381; arrests twenty persons as hostages for Major André, 382; releases them, 383; his MS. account of the André-Arnold plot, 737; establishes Rhode Island refugees in the County of Suffolk, II. 33; houses and lands occupied by, 66; a number of negroes come to New York on proclamation of, 76; applied to in vain for redress in a case of illegal ejection, 86; goes to Southampton to review the troops, 90; his followers rob the farmers on the way, 91; pardons an officer who committed a wanton murder, 92; charged with having abolished civil law in New York, 138; arbitrary proceedings of, 138; abolishes the New York City Courts, 139; sends General Arnold to Virginia, 177; strength, in 1781, of the army under, 180; approves

- of the loyal conduct of the citizens of New York, 181; culpable conduct of, as a General, 182; offers terms to the Pennsylvania mutineers, 183; his ambassadors hanged, *ibid.*; his reasons for not attacking the disaffected, 184; his enmity to Lord Cornwallis, etc., caused the loss of America, 185; Cornwallis surrenders on the same terms as granted to Charleston by, 195; fails to reinforce Cornwallis, 196; neglects to prevent a junction of the French with Washington, 203; stupidity, ignorance, and irresolution of, 206; neglects an opportunity to capture Washington and the Compte de Rochambeau, 207; William Smith, the confidant, adviser, and director of, 209; Washington receives regularly copies of the army returns made to, 210; proposals of Vermont to return to its allegiance to the King forwarded to, 210; his extraordinary action thereon, 211; superseded and embarks for England, 222; universally despised, 223; alarmed at Washington's demand for the surrender of Lieutenant Huddy's executioner, 228; attainted, 269; absurdity of including his name in Act of Attainder, 270; why attainted, 284; controversy between Cornwallis and, 464; responsible for the surrender of Cornwallis, 466; kept in command solely by the personal wish of George III., *ibid.*
- Clopper, Cornelius, II. 305; not included in Act of Attainder, 306.
- Clowes, Samuel, carried prisoner to Philadelphia, I. 68; released, 69; refuses permission to General Birch to appropriate the cage or lock-up at Hempstead, II. 72.
- Club. (See *Whig Club*.)
- Coggeshal, John, wharfinger, salary of, II. 163.
- Coins, clipped, why called "Robertsons," I. 162.
- Colden, Alexander, Colonels Hamilton and Antill married daughters of, II. 29.
- Colden, Cadwallader, Lieutenant-Governor, succeeds Governor Moore, I. 19; Peter De Lancey marries a daughter of, 156; succeeds Lieutenant-Governor De Lancey, 221; a politician, 223; his reasons for declining to appoint certain persons to the office of chief justice, 224; is greatly abused, *ibid.*; intrigues against, 225; fails to appoint a chief justice, 226; insists on judges holding office "during pleasure," 227; offers to grant commissions to judges during good behavior, provided their salaries be permanent, 229; recommends Mr. Ludlow for a seat on the bench, 232; Mr. Elliott succeeds, 234; his official reports on affairs in New York in 1774 and 1775, 431, 447, 463, 468, 493; insists on a share in grant to Lachlan Campbell, II. 353.
- Colden, Major Cadwallader, son of Governor Colden, Lady Johnson takes up her residence with, I. 79; banished to New York, 146; Governor Clinton's opinion of Wm. Smith expressed to, 148; sketch of, 647.
- Colden, David, certifies to the robberies committed by the British army, I. 363; some particulars respecting, *ibid.*; signs petition for revival of civil law, 117; Assistant Superintendent of Police, salary of, 162; attainted, II. 269; his case considered, 288.
- Colden, Elizabeth, marries Peter De Lancey, I. 156.
- College, Kings, in New York, incorporated by Gov. de Lancey, I. 10; provisions of the charter, 11; violent controversy about, and opposition to, 12, 415, 416; library, etc., belonging to, plundered and building converted into a hospital, 136; James Jay appointed to solicit donations to, II. 224; governors of, attainted, 266; their difficulties with James Jay, 475-480; his revenge upon them, 524-540.
- College at New Haven plundered by the British, I. 137.
- College of William and Mary, in Virginia, an Episcopalian institution, I. 11.
- Collyer, Sir George, commands the navy sent against Virginia, I. 295; relieves Penobscot, 298.
- Commissaries, British, and other similar officers, how they got rich, I. 278; how they robbed the British treasury, 279.
- Commissaries, quarter-masters, barrack-masters, and engineers, frauds of, I. 330; cost the nation twenty millions of pounds sterling, 352.
- Commissary of Artillery, frauds committed by, I. 346.
- Commissary of Cattle, frauds committed in department of, I. 344; Abiah Willard fills the office, a Bostonian, character of, 345.
- Commissary of Forage, frauds committed in the office of, I. 341; George Brindly fills office of, 343.
- Commissary of Prisoners, frauds committed by, I. 351; starves hundreds to death, *ibid.*
- Commissioners appointed to conciliate the Americans, I. 144; for restoring peace, arrive in New York, 159; despised by all parties, 160; return to England, 161; pay of, 167, 663; fail to negotiate a peace with the Americans, 257.
- Commissioners to ascertain the amount of debts due to Loyalists, II. 266; fail to secure payment, 267.
- Committee of Correspondence elected in New York, I. 34.
- Committee of "Fifty" and of "Fifty-one"

- in New York, account and names, and proceedings of the, I. 438, 449; of "Sixty," 477-487; of "One Hundred," 488. "Common Sense" published, I. 63; an answer to it prepared and destroyed before publication, 64.
- Concord, military stores at, destroyed, I. 39.
- Confiscation Act.** (See *Attainder*.)
- Congress, Continental, meets at Philadelphia, I. 34; members of, from New York, 35; their instructions from their constituents, *ibid.*; a new, called, 36; New York Assembly refuses to approve of the proceedings of, 37; New York Committee order new election for delegates to, 37; names of New York members to, 38; views of British and New York governments on the, 468-474; dinner to the members of the, toasts at, 475; declares war against Great Britain, 49; votes thanks to Ethan Allen, Warner, and Baker, 50; orders the inhabitants of Queens Co. to be disarmed, 68; refuses to ratify the treaty of the Cedars, 94; finally confirms it, *ibid.*; declares Independence, 105; abandons Philadelphia, 131, 191; votes thanks and a sword to Lieut.-Col. Meigs, 182; ratifies the Saratoga Convention, 211; postpones the embarkation of the Convention troops, 212; orders the Convention troops to Virginia, 214; violates the Convention of Saratoga, 698; appoints a committee to meet the British Commissioners, 257; measures adopted by, in regard to the property of the Penn family, 325; force of a recommendation from, II. 242.
- Congress, Provincial, propose to seize Gov. Tryon and carry him to Connecticut, I. 61; appoint a committee to summon suspected and disaffected persons, II. 295.
- Connecticut filled with Loyalist prisoners, I. 109; operations of rebels of, on Long Island, 270; releases imprisoned Loyalists, 641; several loyal towns in, plundered and burnt, 315.
- Continental Village burned, I. 219; II. 307.
- Continents, uniform of, blue and buff, I. 58.
- Controversy between New York and New Hampshire about what is now Vermont, I. 47, 48, 543; Ethan Allen's course and ways in the, 544-546.
- Convention, New York Provincial, in New York, presents an address to General Washington, I. 57; sits in City Hall of New York, 102; quits New York and retires to White Plains, 110.
- Convention of Saratoga, terms of the, I. 210; Congress postpones, and violates terms of, 212; reason for refusing to fulfil terms of, 213, 214; violation of, 698.
- Conway, General, writes to Congress, I. 88; friend of the Duke of Richmond in the difficulty with Lord Rawdon, II. 219, 220; moves resolution in House of Commons against continuing the war in America, 221.
- Cook, Colonel, member of Council of Safety, Connecticut, II. 301.
- Cooper, Rev. Dr., President of King's College, conspiracy to seize, I. 59; retires to England; death and epitaph of, 60; his character, 61; his "History of the American War" quoted, 219.
- Cornell, Colonel, sent with a force to Queens County, I. 108; takes possession of, and desecrates the Episcopal Church at Hempstead and hunts Loyalists, 109; drives off cattle, horses, &c., into Brooklyn, 111.
- Cornwallis, Lord, recommends General Howe to pursue the American army after the defeat at Brooklyn, I. 112; advances against Fort Lee, 124; pursues the American army through New Jersey, 125; nearly completes the conquest of New Jersey, 141; in command at Brunswick, N. J., 170; detaches a force against Red Bank, 193; pursues the retreating Americans, 259; takes up a position near Hackensack, 285; returns to New York with considerable plunder, 287; despatched to Camden, S. C., 353; marches to Virginia, 354; gains the battle of Camden, 386; retires to North Carolina, 387; General Leslie joins, 388; Sir Henry Clinton an enemy of, II. 285; gains the battle of Guilford, 186; proceeds to Wilmington, 190; assumes command in Virginia, 191; strength of the army under, 192; takes up a position at Yorktown, 193; surrenders, 195; Sir Henry Clinton fails to reinforce, 196; his desperate plan to extricate his army, *ibid.*; Abbé Robine's comments on his conduct, 197; Col. Hayne joins the Americans after departure from South Carolina of, 213; compelled to surrender, 348; controversy between Sir Henry Clinton and, 464; Clinton's misstatements, 465; Sir H. Clinton responsible for surrender of, 466.
- Corporation Library of New York, plundered, I. 136.
- Cosby, Alexander, one of the patentees of Butler's purchase, II. 338.
- Cosby, Colonel, Governor of New York, appoints James De Lancey, Chief Justice, I. 155; patentee in Butler's purchase, II. 337.
- Cosby, Henry, one of the patentees of Butler's purchase, II. 337.
- Cosby, Miss, married clandestinely to Lord Augustus Fitzroy, II. 355.
- Cosby, William, one of the patentees in Butler's purchase, II. 337.
- Council, members of the Governor's, ex-

- cept William Smith, Jr., all Episcopalians, I. 19.
- Court of Admiralty exercises its full powers during the war, II. 103; Robert Bayard judge of, 104.
- Courts of Justice ceased when the Declaration of Independence was published, II. 49.
- Courts of Justice, good effects to be derived from the reopening of civil, II. 22; objections to, 24; why the civil were closed while the British were in possession of New York, 98-119; civil not shut up by Washington in 1776, 135.
- Courts of Police, Military, one established on Long Island, I. 305; three established, on Long Island, on Staten Island, and in New York, II. 2, 18; Judge George Duncan Ludlow appointed "Superintendent" of that on Long Island, 12; motives for establishing, 21; number of judges in, 22; illegal and arbitrary decisions of, 30-32; rascally courts, 33; additional instances of abuses by, 35; unconstitutional and illegal, 113; the judges of, 121; powers of, limited, 122; debts to the amount of thousands of pounds lost in consequence, 123; no protection to the citizen, 124; a proclamation court, 131; unknown to the Constitution, 132; illegal powers claimed by, 152; imposed an excise, 153; arbitrary power exercised by, 154; names and salaries of officers of, 162-164, 413; jurisdiction of, 168; instances of the bad consequences on Long Island from establishment of, 169-175; the four military, and names of their nine judges, 413; proclamations establishing the, 426.
- Court, Prerogative, exercises its full powers, II. 103; charged double fees, 104.
- Coxe, Daniel, exposes the culpable negligence of General Howe, at Trenton, in not pursuing the American Army, I. 128; declares that the salvation of America depends on the continuance of General Clinton in command of the British Army, 361; member of the Board of Commissioners to enforce payment of debts due Loyalists, II. 125.
- Craig, Miss, one of the ladies of honor at the Mischianza, I. 245.
- Crew, Major, horsewhips a man for asking payment of a debt, II. 92.
- Cromwell, Oliver, toasted by the Whig Club, I. 6; his treatment of Drogheda, if applied to America would have been effectual, II. 27.
- Cromwell, Robert, a juror on the trial of Daniel Axtell, the regicide, I. 309.
- Crosby, Captain, engaged with the French fleet under De Ternay, II. 178.
- Crosby, Major, barrack-master-general, country seat in New York occupied by, II. 67.
- Crown Point, seized by Ethan Allen and others, I. 47; abandoned, 49.
- Cruger, Henry, not attainted nor his estate confiscated, I. 152; II. 270; Member of Assembly, etc., 57.
- Cruger, Henry (2d), Member of Parliament for Bristol, etc., II. 57.
- Cruger, John, of the New York Assembly, votes against approving proceedings of the Continental Congress, I. 37; Mayor of New York and Speaker of the Assembly, II. 57.
- Cruger, John Harris, and Jacob Watson concealed on Long Island from the American troops by an old Quaker, I. 108; attainted, 151; son-in-law of Oliver de Lancey and commands a Loyalist regiment, 157; lieut.-colonel of first battalion of de Lancey's brigade, 265; in command of a fort at Huntington, 266; distinguishes himself in the South, 267, 269; city chamberlain, particulars respecting, II. 57, 58; ill-treatment of, 59; in command at Ninety-six, is besieged by Gen'l Greene, 187; forces the latter to raise the siege by a gallant defence, 376-382; biographical sketch of, 383.
- Cruger, Mrs. John Harris, escapes from the burning of her father's house by the rebels, I. 186; daughter of Oliver de Lancey, II. 383; account of her adventures, sufferings, and resolution, 384-386.
- Cruger, Nicholas, settles in the West Indies, II. 57.
- Cruger, Tileman, settles in the West Indies, II. 57.
- Cruger family, notice of, II. 57.
- Cumberland Co. (Vt.) not represented in 2d Continental Congress, I. 38.
- Cunningham, one, "without a commission from France, Spain, the Devil, or even Congress," captures a king's packet and sells her as a prize; ordered to England to be tried for piracy, I. 318.
- Custom houses closed, II. 111; salaries of the officers of the, before the revolution, II. 165. (See *Exports and Imports*.)
- Cuyler, Abraham C., attainted, II. 269.
- Cuyler, Major, bearer of a letter from General Howe to the ministry, I. 330.

## D.

- DANBURY, particulars of the fight at, I. 178; note on the losses by the burning of, 667; but partly burned, II. 307.
- Davenport, Colonel Abraham, exacts a parole from Judge Jones, II. 300, 302; member of the Council of Safety, Connecticut, 301; gives a pass to Judge Jones, 302.
- Davenport, Major, witnesses Judge Jones's parole, II. 301.
- Davenport, Samuel, II. 301.
- Dean's library, the, at Yale College, plundered by the British, I. 138.
- Deane, Silas, intimate with Dr. Smith, brother of William, I. 20; arrives from France with the Treaty of Amity, I. 272.
- Deas, Mr., retires to Canada, I. 216.
- De Barras, Mr., joins Count de Grasse in the Chesapeake, II. 194; returns to Rhode Island, 196.
- De Blois, —, a fiddling refugee from Boston, keeps possession of John Thurman's house, and has him arrested for endeavoring to recover the premises, II. 64.
- Declaration of Independence puts an end to the administration of justice under the Crown in the Colonies, II. 115.
- De Grasse, Count, after an engagement with the British fleet, lands the French troops, II. 194; sails to West Indies, 196; strength of the fleet under, 198; letter of General Washington to, 199; refuses to surrender Lord Rawdon to Congress, 215; sends his lordship to England, 216; signs Articles of Surrender of Cornwallis's army, 231.
- De Heister, General, joins General Howe with 10,000 Hessians, I. 110.
- De Jean, Philip, of Detroit, held as a hostage, I. 317.
- De Kalb, Baron, mortally wounded and taken prisoner at Camden, S. C., I. 386.
- De Lancey, Anne, marries John Watts, I. 158, II. 324.
- De Lancey, Anne, daughter of General de Lancey, wife of Colonel John Harris Cruger, II. 383; account of her sufferings and resolution, 384-386.
- De Lancey, Charlotte, driven out at the burning of her father's house by rebels, I. 185; makes her escape in her night-dress, 186, her own account of it, 669.
- De Lancey, James (eldest son of Etienne), Lieutenant-Governor, passes the charter for King's College, I. 12; appoints John Tabor Kempe, Jr., Attorney-General, 31; Chief Justice and Lieutenant-Governor of New York, notice of, 155; succeeds Sir Danvers Osborn in the Government of the Province, 156; death of, *ibid.*; date of his death, 221; commissions Philip Schuyler as captain, 316; notice of 656; descendants of, 657-660.
- De Lancey, Captain James, of New York (eldest son of Governor de Lancey), Member of Assembly for New York, I. 18; votes against approving proceedings of Continental Congress, 37; attainted, and his estate confiscated, 154; married a daughter of Chief-Justice Allen, of Pennsylvania, *ibid.*; his children, 658; leader of New York Assembly, draws its "Representation and Remonstrance to the House of Commons for the Redress of American Grievances," 521, 539; attainted, II. 269; in England over a year before the Declaration of Independence, 270; why attainted, 271; particulars of the confiscation and sale of his great estate in New York, 281, 540; official statement of purchasers' names and prices, 542-559.
- De Lancey, James, Jr. (son of Peter), incarcerated for quarreling with Colonel Emerick, II. 82; attainted, 269.
- De Lancey, John (son of Peter), elected to the Assembly for the Borough of Westchester, I. 18, 90, II. 305; not included in Act of Attainder, 306.
- De Lancey, John Peter (son of Lieutenant-Governor James), Captain of the 18th, or Royal Irish, I. 658; his children, 659; his house in Broadway, New York, taken forcibly from his tenant Hicks, and one Roubalet put in by Gen. Pattison, II. 85; Major of the Pennsylvania Loyalists, 86.
- De Lancey, Oliver, Brigadier-General (son of Etienne), attainted, I. 151; notice of, 156; his house at Bloomingdale plundered and burned, and his family driven out in their night-dresses, in November, 1777, 185, 669; appointed Brigadier-General, 264; raises three battalions of Loyalists, 265; second in command of an expedition to east end of Long Island, 287; in command at Huntington, Long Island, 292; arrests suspected persons, and places them under bonds, 293; sketch of, 661; descendants of, 662; as commander-in-chief of Long Island empowered to grant recommendations to persons wanting to buy goods, II. 13; his character, 14; relinquishes the office, 15; signs petition for revival of the civil law, 117; attainted, 269; his seat on New York Island burned, 308; Mrs. John Harris Cruger a daughter of, 383.
- De Lancey, Oliver (second son of Brigadier-General Oliver), Major Seventeenth Light Dragoons, I. 662; Adjutant-General, II. 87; testifies to the loyal character of Colonel Floyd, 96.
- De Lancey, Oliver, Jr. (son of Peter), in-

- carcerated for quarrelling with Colonel Emerick, II. 82.
- De Lancey, Mrs. General Oliver, conceals herself at the burning of her husband's house by the rebels, I. 186, 670.
- De Lancey, Peter (second son of Etienne), member of Assembly for Westchester many years, I. 156; his son John succeeds him in the Assembly, *ibid.*; notice of, 660; married Elizabeth, daughter of Governor Colden, 661; descendants of, *ibid.*; his sons James and Oliver tried by court-martial for quarrelling with Colonel Emerick, II. 82.
- De Lancey, Stephen (or Etienne), a native of France, notice of, I. 154; names of his children, 155, 650; sketch of, 648; the family of, in France, 651; his descendants in America, 656-663.
- De Lancey, Stephen, son of Etienne, dies unmarried, I. 156, 650.
- De Lancey, Lieut.-Col. Stephen, eldest son of Brig.-Gen. Oliver, commands a Loyalist regiment, I. 157; Governor of Tobago and Chief Justice of the Bahamas, 187, 265; sketch of, and names of his children, 662; his death, *ibid.*
- De Lancey, Susannah, eldest daughter of Etienne, marries Sir Peter Warren, I. 157, 662; marriages of her daughters, *ibid.*
- De Lancey, Rt. Rev. William Heathcote, son of John Peter, Bishop of Western New York, I. 659; date of his death, his children, *ibid.*
- De Lancey family, the, account of, I. 154-158; origin and sketch of the, 649-663.
- De Lanceys, attack of "The Watchman" on the, I. 425.
- De Lanceys, the, head of one of the great political parties in New York, II. 291; Act of Attainder aimed at the friends of the, *ibid.*
- De Lanceys, Judge Jones allied by marriage to the, II. 304.
- De Lancey's Battalions, a number of the men of, taken prisoners at Sag Harbor, I. 180; withdrawn from Long Island, 270; movements of, 266, 267; disbanded in Nova Scotia, 268.
- Delaval, Lieutenant, one of the knights at the Mischianza, I. 246.
- Delaware River, Washington retreats over, I. 126; Washington crosses the, 168.
- Demont, William, Fort Washington captured through the treason of, I. 630.
- De Noyelles, John, elected Member of Assembly for Orange Co., I. 18.
- De Peyster, Abraham, Treasurer of New York, William Axtell marries a daughter of, I. 307.
- De Peyster, Abraham, captain in Fanning's Loyalists, II. 406.
- De Peyster, Pierre, threatens Col. William Duer, II. 589.
- D Estaing, Count, in command of a French fleet, I. 272; notice of, 272, 273; captures a number of vessels, 274; arrives at Rhode Island, 275; sails from Newport, 276; arrives at Boston, 277; lays siege to Savannah, 291; wounded, and retires with his fleet, 292; reasons why he did not attack the British at Rhode Island, 316.
- De Ternay, Admiral, arrives with a French fleet at Rhode Island, I. 358; encounters the British fleet, and is obliged to retreat, II. 178.
- Diamond Island, Americans make an attack on the British stores on, I. 202.
- Dieskau, Baron, defeated by General Johnson, II. 316; his plan of operations, 365; wounded and taken prisoner, 366.
- Digby, Admiral, joins the British fleet at New York, II. 194.
- Dinwiddie, Governor, sends George Washington to summon the French on the Ohio, II. 344; embassy to, 345.
- Dongan, Governor, grants a charter to the City of New York, II. 48.
- Donop, Count, fails in his attack on Red Bank, I. 193.
- Dove, the, an inn on the Kingsbridge Road, New York, I. 186.
- Drake, Jasper, tavern keeper on the dock in New York, Republicans meet at house of, I. 64; Isaac Sears marries a daughter of, II. 340.
- Duane, James, delegate to Congress, a strong Episcopalian, I. 35; delegate to Second Continental Congress, 38; one of the framers of the "Association," 42; calls on Eastern delegates at New York, 46; applies for act outlawing Ethan Allen and others, 49; owned large tract of land in Tryon County, 72; Lady Johnson asks him to obtain leave for her to go to New York, 78; rudely rebuffs her ladyship, 79; applies to Lord Dunmore, and then to Governor Tryon to be appointed one of the Governor's Council, and is rejected, *ibid.*; character of, *ibid.*; strong advocate of New York in the Vermont controversy, 545; head of the new corporation of New York, II. 60; proprietor of lands in Vermont, 212.
- Du Bois, Peter, Assistant Magistrate, salary of, II. 162; attainted, 269; why, 287.
- Duer, William, delegate to Second Continental Congress, I. 39; marries a daughter of Lord Stirling, II. 324; origin and career of, 587; his difficulty with Pierre de Peyster, 589.
- Dunond, Egbert, member of Provincial Congress, notifies Governor Tryon of its design to seize him and send him to Connecticut, I. 61; the information he gave Governor Tryon, 559.
- Dunbar, Captain, arrested for enlisting men in Connecticut, I. 175; executed, 176.

- Dunbar, Mrs., savage treatment of at Middletown, Conn., I. 176; is harbored and sheltered by a loyal family, 177.
- Dunmore, Lord, James Duane unsuccessfully applies to, for an appointment to the council, I. 79; arrives at Staten Island, 103; joins General Howe, 110; attainted, 150; appointed Governor of Virginia, II. 5; attainted of, 269, 271; why attainted, 283.
- Du Portail, Major, his opinion that Howe's slackness and timidity is the cause of the American success, I. 190, 196.
- Du Portail, M., his opinion of the blunder of the Burgoyne campaign, I. 209.
- Dutch Reformed Church in New York, dependent on the Classis of Amsterdam,
- I. 2; next the Episcopalians in wealth and influence, *ibid.*; Presbyterian scheme to capture its organization and revenues, and consequent schism and riots in the, 22; church edifice converted into a prison for rebels, 23; origin and history of the, in New York, and of the intestine quarrel with the English party in the, 418.
- Dutchess County, Henry and Robert R. Livingston elected members of Assembly for, I. 17; Leonard Van Kleek, Member of Assembly for, 37; Robt. R. Livingston, Jr., delegate to Continental Congress from, 38; its great loyalty in October, 1776, II. 414.

## E.

- EDEN, William, one of the Royal Commissioners, I. 160; married a sister of Andrew Elliot, *ibid.*; recommends the filling of the vacant offices of Lieutenant-Governor and Chief Justice for New York, 161; gets his brother-in-law, Andrew Elliot, appointed Lieutenant-Governor of New York, 234.
- Edmondson, Major, partiality shown to, II. 271.
- Edwards, Rev. Jonathan, called to New York, II. 393; resigns and refuses a recall, *ibid.*
- Elliot, Andrew, collector, etc., revives an intimacy with William Smith, I. 159; introduces him to the Royal Commissioners, 160; appointed Lieutenant-Governor of New York, 161; biographical notice of, 165; offices held by, 166, 167; sent to Washington to intercede for Major André, 376; not allowed to go ashore, 377; his success in reclaiming rebels, 384; in the plan for restoration of New Brick Church to Presbyterians, II. 2; present when Dr. Rogers prayed for success of Montgomery, 4; his character, 14; shares the profits of superintending exports with others, 15; superintendent of police, 32; advises establishment of Court of Police, 120; placed at the head of that court, 121; not responsible to any one, 122; salary of, as Superintendent of Police, 162; Superintendent of Exports and Imports, 163; why he was not attainted, 287; his different official appointments, and pay, 454, 461.
- Elliott, Sir Augustus, his keen reply on declining a Mischnianza, I. 151.
- Elliot, Sir Gilbert, patronizes his brother, Andrew Elliot, I. 166.
- Emerick, Colonel, two Loyalist gentlemen incarcerated for quarrelling with, II. 82.
- Engineers, how they made fortunes out of the war, I. 347, 350.
- Episcopalians, the most influential and wealthy people in New York, Presbyterians the third in importance, I. 2; the rival political parties supported by each, II. 291, 389, 397.
- Erskine, Sir William, commands the military at Southampton, L. I., II. 95.
- Excise, illegally imposed and exacted in the city of New York, II. 152.
- Exports and Imports, Superintendent of, appointed, II. 454; names and salaries of officers of, 163, 461.

## F.

- FAIRFAX, Lady, denounces the trial of Charles the First, and stigmatizes Cromwell as a traitor, I. 306.
- Fairfield burned, II. 307.
- Falmouth (N. H.) bombarded and burned, II. 307.
- Fanning, Colonel, secretary to Governor Tryon, I. 87.
- Farquhar, Major, left in command of Fort Niagara, II. 370.
- Farrell-Wade, Captain, brother-in-law of Sir William Johnson, killed in the battle of Lake George, II. 338.
- Fast, annual, difference between it and an annual Thanksgiving, II. 334.
- Ferguson, Captain, makes a descent on Barnegat, and plunders and burns the settlement, I. 286.
- Ferguson, Colonel, defeated at Hanging Mountain and killed, I. 387.
- Fire ships, placed in the North River, I. 349.

- Fitzroy, Lord Augustus, one of the patentees of Butler's purchase, II. 337; married clandestinely to Miss Cosby by a Scotch minister, 355.  
 Fleet Prison. (See *Prison-ships, American*, I. 706-710.)  
 Fletcher, Colonel, act for settling a ministry in New York, etc., passed in the time of, I. 7.  
 Flip, a New England drink, composition of, I. 180.  
 Floyd, Colonel Benjamin, plundered, I. 268, 288; signs petition for revival of civil law, II. 117; not included in Act of Attainder, 287.  
 Floyd, Elizabeth, daughter of Colonel Richard Floyd, ill-treated by rebels, I. 185; escapes into a swamp, 186; consequent sufferings, 187; married John Peter de Lancey, 658; attempt to set her on fire by rebels, and how she escaped, 669.  
 Floyd, Colonel Richard, attainted, and his estate confiscated; retires to Nova Scotia, I. 185; plundered, 268; never paid for horses and wagons taken by the Government, 333; falsely accused of concealing rebel property, II. 94; goes to Nova Scotia, ibid.; persecution of, 95, 96; signs petition for revival of civil law, 117; attainted, 269; why, 287; his case considered, 288; a first cousin of Mrs. General Woodhull, 593, 594; some of his descendants and some of Woodhull's now the same persons, 612.  
 Floyd, William, delegate to Second Continental Congress, I. 38; not of suave manners, 659; the wood on his estate ordered cut down, II. 26; of indifferent abilities, and a Presbyterian, ibid.; the order not executed, 27.  
 Folliot, George, attainted, II. 269, 285.  
 Forman, David (otherwise "Black David"), hangs three Loyalists, I. 364.  
 Fort Clinton reduced, I. 219.  
 Fort Constitution reduced, I. 219.  
 Fort Edward, Burgoyne arrives at, I. 201.  
 Fort George, Lake George, description of, I. 200; surprised and captured by New Yorkers in 1775, 550.  
 Fort Lee, Americans abandon, I. 124.  
 Fort Montgomery reduced, I. 219.  
 Fort Sackville, Illinois, surrendered to Americans, I. 317.  
 Fort Stanwix, operations against, I. 214-218.  
 Fort Washington, American Army retires to, I. 120; captured, and garrison taken prisoners, 124; the capture effected through the treason of its Adjutant, William Demont, 626.  
 Foster, Captain, captures the American forts at the Cedars, I. 92.  
 Fowler, Jonathan, taken prisoner and carried to New Haven, I. 67.  
 Fox, Charles James, letter to Congress brought from, I. 88; one of the leaders of the new Ministry, II. 221; peace the bantling of, 262.  
 Franklin, Benjamin, sent to Canada to gain over the inhabitants to the American cause, I. 91; requests that his son be detained prisoner in Connecticut, 135; one of the committee to meet the British Commissioners, 257; Edmund Burke correspondent of, II. 221; Commissioner to conclude a treaty of peace with Great Britain, 237; malicious and cunning, 489; bitter enemy of the Loyalists in negotiating the treaty of peace, 497-500.  
 Franklin, William, Governor of New York, prisoner in Connecticut, I. 135; a prisoner in New England, 238; head of the "Associated Loyalists," retires to England, II. 228; his connection with the "Associated Loyalists," 481.  
 Franks, Miss, one of the ladies of honor at the Mischniaza, I. 246.  
 Franks, Moses, holds a mortgage on Eaton's Neck, Long Island, II. 47; entry on the land refused to, 48.  
 Franks, Phila, of Philadelphia, marries Oliver de Lancey, I. 156.  
 Frauds committed by Commissaries, Quarter-Masters, and Barrack-Masters exposed, I. 330-352.  
 Frazer, General, mortally wounded, I. 207; description of his funeral, 209.  
 Freeman, Mr., one of the patentees of Butler's purchase, II. 337.  
 French, Captain, leads a sortie from Fort Ninety-six, II. 382.  
 French, Charity, falsely accuses Colonel Floyd of concealing rebel property, II. 94; a notorious villain, retires unpunished to New York, 96.  
 French Reformed Church in New York, I. 2; John Morin Scott brought up in, 4.  
 Fry, Major, of Massachusetts troops, burns Acadian villages, II. 308, 575.  
 "Funds, City," during the war, what constituted, and how squandered, II. 143-154; 458-460.

## G.

- GAGE, General, sends party to seize military stores at Concord, I. 39; resolves "to take the bull by the horns" at Bunker's Hill, 51; pays dearly for his resolution, 52; recalled, 53; General Putnam offers his services to, 102.  
 Gaine, Hugh, printer, exposes the manner in which a "bogus" petition against

- the charter to King's College was got up in the name of the Irishmen of New York, I. 14, 415.
- Gale, Samuel, elected Member of Assembly for Orange County, I. 18; of New York Assembly, votes against approving proceedings of Continental Congress, 37.
- Galloway, Joseph, offices held by, I. 237; lays a plan for seizing the State officers of New Jersey before General Howe, who first approves, and then stops it, 238, 714; delegate to Congress, career and "portrait" of, II. 109; plans Howe's expedition to the Chesapeake, *ibid.*; responsible for the forced construction put on the Prohibitory Act, 110; Howe pleased with his construction of Prohibitory Act, 120; his forced construction of the Prohibitory Act adopted by Jefferson, 430; further mention of, 431.
- Gambier, Admiral, succeeds Lord Howe in command of the British fleet, I. 277.
- Gansevoort, Colonel, in command at Fort Stanwix, I. 215; parleys with St. Leger, 217.
- Gansevoort, Leonard, member of committee to examine suspected persons, II. 206.
- Gardiner, Alexander, his salary, II. 163.
- Gardner, Major, one of the managers of the Mischianza, I. 242.
- Gates, General, occupies house of William Smith's brother, in New York, I. 85; stationed at Morristown, N. J., 126; in command of the American Army at Stillwater, 201; gains battle of Saratoga, 206, 207; Burgoyne renders to, 208; Putnam advises him to prepare for the worst, 219; Secretary, etc., to Governor Moncton, his character, 225; defeated near Camden, 267; loses the battle of Camden, 386; dismissed the service, 387; relative numbers of his and Burgoyne's armies in 1777, before and after the surrender, 674; causes of his victory, 681.
- Gautier, Andrew, harsh treatment of his sons, II. 63.
- George II., Assembly dissolved in consequence of death of, I. 17.
- George III., personally keeps Clinton in command in America, in spite of his ministers, II. 466.
- Georgia, part of de Lancey's brigade sent to, I. 267; British force sent against, 289; returns to its allegiance, 290; entirely under British jurisdiction, 319; extract of a letter from the Governor of, II. 175.
- Gerard, Monsr., plenipotentiary from France, arrives in America, I. 273.
- Germaine, Lord George, publishes a mutilated copy of General Clinton's despatch, I. 131; pacifies Clinton, 132; becomes a friend and patron of General Robertson, 161; extract of Burgoyne's letter to, 202; principal promoter of the Northern campaign, 218; hostile to Sir Wm. Howe, 234; forgets to send Sir Wm. Howe the orders to co-operate with Burgoyne, 696; orders the seizure of rebel property, II. 149; authorizes the formation of the Corps of Associated Loyalists, 227.
- German Calvinists in New York, I. 2.
- German princes, terms on which they hired their soldiers, I. 320.
- German soldiers stationed at Kingsbridge, I. 313.
- Germanstown, British defeated at, I. 194; loss of Americans at battle of, 195.
- Gloucester Co. (Vt.) not represented in ad Continental Congress, I. 38.
- Gordon, dowager Duchess of, marries St. Paul Morris, I. 139.
- Gouverneur, Nicholas, retires to New Jersey, II. 78; gives Mrs. Kearny an order to receive his rents in New York, who is cheated out of them, 79.
- Gouverneur, Mr., released from the tower, II. 222.
- Governor's Island. (See *Nutten Island*.)
- Grafton, Duke of, son of Lord Augustus Fitzroy, II. 355.
- Graham, Lewis, member of committee to examine disaffected persons, II. 296.
- Grant, General, sent to West Indies and reduces St. Lucia, I. 289.
- Graves, Admiral, engages the French fleet under Count de Grasse, II. 194.
- Greene, General, drives the English out of South Carolina, I. 354; deputed to meet a messenger sent by General Clinton to try and save Major André's life, 377; at Mount Washington, 626; at Fort Lee, 633; supersedes Gates in command at the South, II. 185; defeated at Guilford Court House, 186; defeats Lord Rawdon at Camden, 187; raises the siege of Fort Ninety-six, 188; fights at Eutaw, *ibid.*; coops up the British in Charleston, *ibid.*; Col. Hayne joins, 213; lays siege to Fort Ninety-six, 378; raises the siege, 382.
- Grenal, Thomas. (See *Hobart, J. S.*)
- Grenville, Mr., projector of the Stamp Act, saves, for the government, six millions sterling in the French war, I. 350.
- Grey, General, defeats General Wayne, I. 192; lays waste Fairhaven and other settlements, and sends vast plunder to New York, 278; "Mrs. Washington's Own" regiment surprised and massacred by order of, 286.
- Guilford, Americans defeated at, II. 186.

## H.

- HALIFAX, Earl of, a connection of his appointed Sheriff of New York, I. 30.  
 Hallett, Captain, carried prisoner to Philadelphia, I. 68.  
 Hallet, Joseph, II. 305; not included in Act of Attainder, 306.  
 Hamilton, Archibald, not attainted, II. 287.  
 Hamilton, Colonel, his opinion of General Howe as commander-in-chief, I. 189; appropriates proceeds of fines imposed by him, 348; congratulated on the reinstatement of Col. Antill, his brother-in-law, II. 29; married a daughter of Alexander Colden, *ibid.*; obtains permission to cut down timber on lot mortgaged to John Willett, 46.  
 Hamilton, Henry, Lieut.-Governor of Detroit, taken prisoner, I. 317.  
 Hamilton, Lieutenant, esquire at the Mischianza, I. 245.  
 Hamlin, Colonel, of Middletown, asserts that the letters were suppressed which recalled the Loyalist prisoners on parole to Connecticut, II. 293.  
 Hamlin, Jabez, Judge Jones consigned to, II. 302; gives a pass to Judge Jones, 303.  
 Hampden, John, toasted by the Whig Club, I. 6.  
 Hampton, Rev. John, II. 390.  
 Hampton, Jonathan, a common carpenter, makes an enormous fortune during the war, I. 336.  
 Hancock, John, congratulated on his escape from capture by the Royal Army, I. 46; his uncle furnishes the vessels to expatriate the Acadians, II. 577.  
 Harcourt, Colonel, takes General Lee prisoner, I. 128, 173, 672; who he was, 673.  
 Hard money or provisions only taken in New York for merchandize, II. 13.  
 Hardy, Sir Charles, Governor, arrives in New York, appointed Admiral, and subsequently sails for Cape Breton, I. 156; appoints Thomas Jones Clerk of Court of Common Pleas, Queens County, 232.  
 Harford, Mr., devisee of Lord Baltimore, deprived of his proprietary rights in Maryland, I. 328; ward in Chancery, 329; allowance for his losses, II. 663.  
 Harlem, American Army retires to, I. 120.  
 Harrison, John, and wife, patentees in Butler's purchase, II. 338.  
 Hartley, David, writes to Congress, I. 88.  
 Haverham, Ensign, one of the esquires at the Mischianza, I. 246.  
 Haviland, General, goes to Canada by way of Lake Champlain, II. 311.  
 Hawley, Captain, seizes Judge Jones and takes him to Connecticut, II. 277, 300, 564, 568.  
 Hayne, Colonel Isaac, case of, II. 213; taken prisoner and executed, 214; Lord Rawdon charged with having murdered, 216; correspondence regarding the affair of, 218; case of, and his reasons for his course, 473.  
 Heathcote, Caleb, heads the first vestry of Trinity Church, I. 397; and the petition for its charter, 400; notice of, 412; eldest daughter of Anne, marries Lt.-Gov. de Lancey, 657.  
 Held, Lieutenant, two years a prisoner, escapes to New York, I. 372.  
 Helme, Benjamin, case of, II. 60.  
 Hempstead, history of General Birch's appropriation of Samuel Pintard's country-seat at, II. 70; a dead burglar hanged at, by Birch, 73.  
 Hendrick, Mohawk Chief, killed at the battle of Lake George, II. 338; buried with honors of war, 366.  
 Hercheimer, General, marches to the relief of Fort Stanwix, I. 216; killed, 217; his brother a Loyalist, 218.  
 Hercheimer, John Yost, attainted, II. 269.  
 Hewlett, Lieutenant-Colonel Richard, successfully defends the fort at Brooklyn, I. 183. (*See Held.*)  
 Hicks, one, hires a house of Captain John Peter de Lancey in Broadway, N. Y., but is arbitrarily ousted by the military, and the house given to another, II. 85; dies on his passage to England, 86.  
 Hicks, Thomas, his house on Long Island plundered, I. 304.  
 Hicks, Whitehead, not attainted, I. 151; succeeds Justice Livingston on the bench in 1776, 233; afraid of his own shadow, and inclined to the rebellion, II. 119; Mayor of New York when appointed Judge of the Supreme Court, 418.  
 Highlanders, New York, a company of, I. 323.  
 Hill, —, a refugee from Boston, Superintendent of Repairs of Streets in New York, during the war, II. 127; rate of his charges, *ibid.*; paid well for the office, 128.  
 Hill, John, wharfinger at Brooklyn, his salary, II. 163.  
 Hillsborough, Lord, General Court of Massachusetts refuse to rescind a vote at the request of, I. 28.  
 Hobart, John Sloss, with Thomas Grenal, mortgages Eaton's Neck, L. I., to James Jauncey, II. 47; their property destroyed, 48; member of committee to examine disaffected persons, 296.  
 Hobart, Lieutenant, one of the Knights at the Mischianza, I. 247.

- Holland, Edward, Member of the Council, I. 12; notice of, II. 40.
- Holland, Henry, his property seized, and his grandchildren supported by strangers, II. 40.
- Holland, Hitchin, lieutenant of a New York independent company, II. 40.
- Holmes, James, colonel of New York Continental Regiment, I. 59; biographical sketch of, II. 334; short account of the descent and life of, 618.
- Holt, John, a New York Republican printer, republishes the "Watchman" in New York, I. 19.
- Hood, Sir Samuel, joins Admiral Graves's fleet, II. 194.
- Hopkins, Comimodore, sent to island of New Providence, in the Bahamas, arrests the Governor, and plunders the place, I. 83.
- Horneck, Captain, one of the Knights at the Mischianza, I. 245.
- Horsmanden, Daniel, Member of the Council, I. 12; issues a warrant for the arrest of Alexander McDougal, and commits him to prison, 26; Puisne Judge of Supreme Court, 221; particulars respecting, 222; makes a dead push to be Chief Justice, 223; reason for not appointing him, 224; subsequently appointed Chief Justice, 230; scheme to secure the succession after his death, 231; succeeded by William Smith, 235; Member of the Council, II. 113; signs petition for revival of civil law, 117; ceases, through infirm health, for several years to sit on the bench, 119; his letter to Governor Tryon, requesting him, on behalf of the inhabitants of New York, to present the petition for the revival of civil law, 434, 452.
- Hosmer, Titus, chairman of the committee at Middletown, cruelly orders Mrs. Dunbar to quit the place, I. 176; judge of Admiralty for New England, 177.
- Hospital, King's College converted into a, I. 136; Brick Presbyterian Church converted into a, II. 2; Jonathan Mallet, physician and purveyor of the, 83; the Bowery mansion of James de Lancy converted into a, 544.
- Howe, General, appointed commander-in-chief in America, I. 53; attempts to open a negotiation with General Washington and fails, 106; takes possession of Staten Island, 103, 105; strength of the army commanded by, 110; refuses to pursue the American army after the battle of Brooklyn, 112; continues inactive, 114; certifies to the loyalty of the inhabitants of Long Island, ibid.; said to have shared in the proceeds of sale of Loyalists' cattle, 116, 118; crosses to New York island, lands at Kip's Bay, and seizes the heights of Inclenberg, 120; neglects to have the rebels punished who were taken in arms, 121; marches to and takes possession of White Plains, 122; declines to pursue the enemy on their retreat from White Plains, and returns to New York, 124; joins Cornwallis at New Brunswick, 125; neglects to pursue the enemy across the Delaware, 126; returns to New York, 129; his army plunder the public libraries of New York, 136; and at Princeton, 137; General Robertson testifies against, 161; appoints Andrew Elliot Superintendent of Police, 167; wastes his time in debauchery at New York, 170, 176; letter of Colonel Campbell to, 174; invested with the Order of the Bath, 177; resumes operations in New Jersey, 187; retires before General Washington, 188; returns to Mrs. Loring at New York, 189; moves his army to the head of Chesapeake Bay, 190; moves on Philadelphia, 191; enters that city in great pomp, 192; discredits information of meditated attack on Germantown, 194; is roused out of bed by news of British defeat, 195; goes into winter quarters at Philadelphia, 196; strength of his army, 197; suggestion that he be raised to the peerage by the title of "Delay Warr," ibid.; how he did not co-operate with General Burgoyne, 208; desires Burgoyne to request of Congress permission to embark the Convention troops at Rhode Island, 211; recalls part of the force under General Clinton, 219; ill consequences of said order, 220; General Robertson a witness against, 234; strength and inactive state of the army under, 237; approves and then thwarts a plan for seizing the State officers of New Jersey, 238; superseded, 239; advises magistrates of Philadelphia to make their peace with Congress, ibid.; severe strictures on his inefficient operations, 240; ridiculous farce at Philadelphia on his retirement, 241 (See *Mischianza*); participates in the fête of the Mischianza, 242; sails for England, 251; an enemy to the American war, 252; review of his conduct of the war, 253-255; an execution his merited reward, 261; sails for England, and is succeeded by Sir Henry Clinton, 262; certifies to the loyalty of the inhabitants of Long Island, 330; Mrs. Joshua Loring, mistress of, 351, II. 57, 86, 423; his wild goose chase to the head of the Elk condemned, I. 357; order to co-operate with Burgoyne forgotten to be sent to him, 695; inefficiency of, 714; nurses the rebellion, II. 7; forbids sending goods out of the city without a permit, 13; bestows on David Matthews all the profits from ferries, markets, and slips, 50; had no right to give

- away the city revenues, 57; Samuel Pintard joins, 69; Mrs. Loring the cause of his loss of honor, 86; appoints Joseph Galloway Superintendent of Police, etc., at Philadelphia, 109; public confidence restored by his victory at Brookland, 115; enters New York, 116; establishes a court of police, 120; called on to deny certain charges, 138; arbitrary proceedings of, 138; city courts abolished by, 139; defeats Washington on Long Island, 347; when he bestowed revenues of New York City on David Matthews, 421.
- Howe, Admiral Lord, arrives at Staten Island and takes command of the fleet, I. 103; remains inactive at Staten Island during operations at Brookland, 113; enters the Delaware, 192; attends the fête of the Mischianza, 242; review of his operations during the war, 260; refuses to protect the Loyalists on Long Island, 270; adopts measures to prevent the French fleet entering New York harbor, 274; delivers command of the fleet to Admiral Gambier, and sails for England, 277; Joseph Galloway worms himself into the good graces of, II. 110; petitioned to revive civil law, 117; takes no notice of the petition, *ibid.*
- Howes, the two, who they were, I. 721.
- Huddy, Lieutenant, hanged, II. 227; Sir Guy Carleton condemns the act, 229; Capt. Asgill designated to be executed in retaliation for the murder of, 232; cause of the execution of, 483.
- Hudson, Frederick, not attainted, II. 287.
- Hudson, Major, plundered and carried prisoner to Connecticut, I. 269.
- Huffe, Henry, a Loyalist, turned out of his property in Westchester County and sent to New York, II. 157; applies for relief, and is told to go to the workhouse, 158.
- Hulens, Mr., imprisoned for "damning the Town Major," II. 81.
- Hulet, John, of Oyster Bay, plundered and carried prisoner to Poughkeepsie, I. 269.
- Hulet, Mr., General Birch appropriates a quantity of lumber belonging to, II. 71; threatened when applying for payment, 72.
- Hulet, Richard, Lieut.-Colonel of 3d De Lancey Loyalists, I. 265; in command of the fort at Brookhaven, 266. (See *Hulet*.)
- Hull, one, keeper of the City Arms Tavern, New York, supplies General Lee's table, I. 173.
- Huntington, Lieutenant-Colonel Cruger in command of a fort at, I. 266; description of bay and town of, 359.
- Huntington, Earl of, informs Lord Rawdon that the Duke of Richmond accused him of having murdered Colonel Hayne, II. 216; certifies to the correctness of his Grace's apology, 217.
- Hurd, General, sent to Queens County to disarm the inhabitants, I. 68; passes through New York with his force uninterrupted, 69; disarms the Loyalists on Long Island, 108, 569, 571.

## I.

- IMMORALITIES** in New York among the British Commanders, I. 341.
- Inclenberg, heights of, fortified, I. 120.
- Independence of America, prophecy of the, I. 24.
- Independence of the American Colonies declared, I. 105.
- Independent Reflector, the, published, I. 6; influence of, 7; account of, 392.
- Indians, treaty of Congress with, at Albany, I. 71, 573-578; with General Schuyler near Johnstown, I. 580.
- Inglis, Rev. Charles, attainted, I. 152; II. 269, 285; why, 271, 286.
- Inglis, Mrs. Margaret, attainted, I. 152; II. 269, 287.

## J.

- JACKSON, Parmenias, a Quaker, robbed and murdered by soldiers, II. 93.
- Jackson, Thomas, his property seized by order of Court of Police, II. 39.
- Jacobites, Presbyterians chiefly, II. 392.
- Jamaica, L. I., Col. Ludlow obtains a rebel farm at, II. 75; Court of Police for Long Island held at, 168.
- Jamaica, W. I., Loyalists remove to, II. 235.
- Jans, Anneke, claim of her heirs to property of Trinity Church, I. 8, 10, 403; Wm.
- Livingston and Wm. Smith connections of, and lawyers in the suit, 10, 413.
- Jauncey, James, elected Member of Assembly for New York, I. 18; votes against approving proceedings of Continental Congress, 37; Eaton's Neck, L. I., mortgaged to, II. 47; Gov. Robertson refuses him possession, 48; attainted, 269, 285; case of, 276; why attainted, 281, 291; his case the same as that of Judge Jones, 305.
- Jauncey, James, Jr., death of, II. 12.

- Jay, Sir James, released from the provost, particulars respecting, II. 223, 224; his affairs with the governors of King's College, who compel him to settle, 475-489; eldest brother of John Jay, 480; how he came to be knighted, *ibid.*; suggests to Lady Asgill to appeal to the French Court for her son's life, 486; originates and forces through the Act of Attainder to revenge himself on the governors of the College, 524-538; intrigues to return to his allegiance to the King, 539.
- Jay, John, delegate to Congress, a strong Episcopalian, I. 35; delegate to 2d Continental Congress, 38; one of the framers of the Association, 42; calls on Eastern delegates at New York, 46; minister to Madrid, brother-in-law of Henry B. Livingston, II. 223; commissioner to conclude a treaty of peace with Great Britain, 237; dictates the form of the British commissioner's commission, *ibid.*; member of committee to examine disaffected persons, 296; marriage of, 233, 474; how he drew up Oswald's commission, 491; severely condemns the Act of Attainder, 538.
- Jersey line, revolt of, II. 180.
- Jessup, Ebenezer, attainted, II. 269.
- Jessup, Edward, attainted, II. 269, 285.
- Jesuit. (See *Malagrida*.)
- "Jew Peter," Peter R. Livingston so called in New York, I. 30.
- Jews in New York, I. 2.
- Johnson, Guy, retires to Canada, I. 216; attainted, II. 269, 285; married a daughter of Sir William Johnson, 374.
- Johnson, Sir John, ordered arrested, I. 71; his house pillaged, 72; retires to Canada, 75; superintendent of Indian affairs, 80; accompanies the force ordered against Fort Stanwix, 214; forced to abandon his property, 216; defeats General Herkimer, 217; General Schuyler engaged against, 318; why he left Johnson Hall, 583; his parole not broken, but discharged by General Schuyler, 585; their interviews, negotiations, letters, and the actions of each, Notes XXX. and XXXI., 578-593; attainted, II. 269.
- Johnson, Lady, taken prisoner, I. 76; removed under guard to Albany, 77; asks leave of Provincial Congress to go to New York and is refused, 78; permitted to go to Coldenham, 79; makes her escape to New York, 80; her coolness, 81; her treatment as a hostage by Schuyler, Washington, and the New York Provincial Convention, her great spirit and resolution, 586-593.
- Johnson, Lieut.-Col., commands the fort at Stoney Point, I. 312.
- Johnson, Sir Wm., a native of Ireland, date of his death, I. 78; Philip Schuyler a captain under, II. 316; a friend of the Butler family, 338; operations of, 339; biographical sketches of, 362-375, 637; his wife a native of Germany, married to him in 1739, 641; her death, *ibid.*; dates of events in the family of, 643.
- Johnstone, Governor George, one of the Royal Commissioners, I. 160, 664.
- Johnstown, General Schuyler ordered to disarm inhabitants of, I. 71; Episcopal Church at robbed, 73; Sir William Johnson's vault broken and his remains disturbed, 74; founded, II. 371; made the county seat of Tryon County, 372.
- Jones, David, the judge assigned to try suit against Trinity Church for recovery of land in New York, I. 9; Speaker of the Assembly, an Episcopalian, 13; Puisne Judge of Supreme Court, particulars respecting, 222; appointed second Judge of Supreme Court, 230; resigns his seat on the bench, 232; succeeded by his son, Thomas Jones, author of this history, *ibid.*
- Jones, Mr., sends Indians to conduct Miss McCrea to the British lines, who murder her, I. 281.
- Jones, Samuel, illegal seizure of his farm by order of Court of Police, II. 41; mentioned, 305; not included in Act of Attainder, 306; note on, 415.
- Jones, Thomas, Judge (son of David), advises the Governor to call out the militia to put down the rioters in New York in 1775, I. 41; British refuse to satisfy him for his cattle taken by them, 117; holds court at White Plains in April, 1776, rebel soldiers tried and convicted before, for larcenies, their officers thank the court, 137; succeeds his father on the bench of Supreme Court, 232; attainted, and his estate confiscated, 233; his premises plundered and himself carried prisoner to Connecticut, 268; plundered, 294; six months a prisoner in Connecticut, *ibid.*; bears personal testimony to the fraudulent manner in which things were managed in the office of Commissary of Forage, 342; prisoner in Connecticut, II. 86; Court of Police seize a farm of his, 43; illegality of such proceeding, 45; one of his houses at Fort Neck plundered for the benefit of Colonel Birch, 74; character and sufferings of, 88; arbitrary conduct towards, 89; holds Court of Oyer and Terminer at White Plains in April, 1776, a murderer tried, convicted, sentenced, and executed, 104; prisoner in New England, 119; attainted, 269; full details of the persecution done to, 271, 276; his wife robbed by privateers from Connecticut, 277; he is exchanged for General Silliman, 278; why included in Act of Attainder, 282, 283; further consideration of case of, 288; victim of private revenge, 290; case of, 295;

- paroles of, 300, 301, 302; proposal to exchange General Silliman for, 301; passes to, 303; allied by marriage to the de Lanceys, 304; full particulars of his two arrests in 1776, 560-572; his two paroles on being released the same year, 562; the last parole in operation when seized the third time in November, 1779, for General Silliman, 563; particulars of his capture, 564; full account of the captures and the releases of Judge Jones and General Silliman, written by Mrs. Silliman, the General's widow, in 1801, 565-571.
- Jones, Mrs. Thomas, particulars of her returning home from New York in July,
- 1776, against Washington's orders, and without a pass, I. 104; Lord Stirling's rudeness, *ibid.*; Captain Anthony Rutgers conveys her to Long Island, 105, 598; married to Judge Jones, 658.
- Judges, their commissions during good behavior lapse on the death of the King, I. 226; tenure of office changed, 227; consent to serve "during pleasure," 228; controversy respecting the tenure of commissions of, 229, 230.
- Justices of the Peace permitted to act only in certain counties, II. 130; superseded by Court of Police, 131.
- Jumonville, Captain de, killed, I. 345; notice of, II. 623.

## K.

- KANE, John, attainted, II. 269, 285.
- Kearney, Michael, searcher in Custom-House, salary of, II. 163.
- Kearny, Mrs., receives an order from Nicholas Gouverneur to collect his rents in New York, II. 79; daughter of Robert Lattice Hooper, 79; fails to receive the rents, 80.
- Kearny, Philip, granted the use of a rebel farm in Flushing, II. 156; obliged to pay rent for, 157.
- Kempe, John Tabor, Attorney-General, notice of, I. 31; attainted, II. 269, 285.
- Kendle, Andrew, wharfinger, his salary, II. 163.
- Kennedy, Archibald, member of the Council, I. 12; subsequently 11th Earl of Cassilis, 663; married Ann Watts, of New York, *ibid.*
- Kettletas, Rev. Abraham, made a rebel by his brother-in-law, William Smith, I. 149; sketch of, 648.
- Kilmarnock, Earl, beheaded, II. 274.
- Kilmarnock, Lady, who joined the Pretender, was never attainted, II. 274.
- King, —, conductor of military wagons, II. 85.
- King, Colonel, commands loyal militia at Fort Ninety-six, II. 377.
- King's Arms, the Whig Club meets at the, I. 5.
- Kingsbridge, refugees at, seize a lot of cattle on the way to the American army, I. 118; American army retires to, 120.
- King's (now Columbia) College, chartered, I. 10; sharp controversy about, petitions and newspaper publications against, 13-15; conspiracy to seize its President, Dr. Cooper, 59; his character, 61; harsh invective of the charter controversy, 415; petitions against, and their authors, 416; the newspapers on the controversy, *ibid.*; malignant efforts of Wm. Livingston against, defeated, 417; Dr. Johnson's letter, 418. (See *College*.)
- Kings County, John Rapalje elected Member of Assembly for, I. 18; John Rapalje Member of Assembly for, 37; Simon Boerum, Member of Continental Congress from, 38.
- Kingston burned, I. 219; II. 307.
- Kip, —, Lady Johnson assumes the name of, I. 81.
- Kip's Bay, General Howe's army lands at, I. 120, 605; infamous missiles found in American encampments at, 610.
- Kissam, Daniel, in New York Assembly votes against approving proceedings of Congress of 1774, I. 37; carried prisoner to Philadelphia, 68; released, 69; particulars respecting, II. 24; signs petition for revival of civil law, 117; attainted, 269; why attainted, 281; his case considered, 288.
- Knox, Henry, Boston bookseller, afterwards General, I. 448.
- Knox, Mr., Samuel Bayard, Jr., supersedes him as Secretary of New York, II. 19.
- Knyphausen, General, at Fort Washington, I. 124; attends the fête of the Mischianza, 242; takes Fort Washington, 258, 626, 633; takes up a position in Westchester County, 285; returns to New York with considerable plunder, 287; left in command at New York, 319; makes preparations for the defence of that city, 322; enters New Jersey, 355; threatens General Washington's army, but ordered back to Staten Island, 356; proposal to refer the case of Major André to, 377.

## L.

- LA FAYETTE, MARQUIS DE**, present at Major André's execution, I. 382; sent to Virginia against Arnold, II. 178; ordered to Virginia, 193; makes a junction with the French Army, 194; strength of the force under, 197.
- Laidly, Rev. Mr., writes for American Whig, particulars respecting, I. 21; signatures under which he wrote, 23; predicts the independence of America, 24; calls on Eastern delegates, 46.
- Lake Champlain, Americans defeated on, I. 133.
- Lamb, Anthony, biographical notice of, II. 344.
- Lamb, John, leader of movement in New York on news of the battle of Lexington, I. 39; member of the Republican Club, 62; and others destroy edition of answer to "Common Sense," 64; biographical notice of, II. 342; sketch of family of, 622.
- La Motte, Captain, taken prisoner, I. 317.
- Lasher, Captain, escorts Eastern delegation into New York, I. 45.
- Lasher, Colonel, heads an Anti-Loyalist mob in New York, I. 101.
- Laurens, Mr. H., released from the tower, II. 222; commissioner to conclude a treaty of peace with Great Britain, 237.
- Laws of the Province and Common Law, why were they abolished, II. 98.
- Leake, Robert, attainted, II. 269, 285.
- Lee, Colonel, aids in besieging Fort Ninety-six, II. 380.
- Lee, General Charles, arrives in New York, I. 55; sets out for Boston, 58; assumes command at New York, 82; removes cannon to Kingsbridge, 83; taken prisoner, 126, 128; confined in the City Hall, New York, his luxurious treatment there, 173; account of capture of, 672; takes possession of New York, II. 135; Isaac Sears, Adjutant-General of Militia under, 341; biographical sketch of, 350.
- Lefferts, Isaac, his crop of apples destroyed by a loyal wagon-master, II. 87.
- Lefferts, —, harbors Augustus Van Cortlandt, curious mode adopted by him to avoid seeing said Van Cortlandt, I. 109.
- Leggett, —, robbed, on the alleged ground of being a rebel, II. 89.
- "Legion," for a committee on tarring and feathering, warn Loudon against printing anything against America, I. 65.
- Leslie, General, joins Lord Cornwallis at Camden, I. 388.
- Lewis, Francis, delegate to Second Continental Congress, I. 38; added to Committee of Fifty, II. 439; biographical sketch of, 357; facts in his early history, suit of Annelly against, 627.
- Lexington, news of battle of, received in New York, and effect of, I. 39.
- Libraries plundered by British soldiers, I. 136, 137, 138, 641. (See *Dean's Library*.)
- Library of the corporation plundered, I. 136; subscription, plundered, 136; of Thomas Hicks carried off by rebels, 304.
- Lieutenant-Governor Colden's conduct relative to the Stamp Act considered, a pamphlet, brought before the Grand Jury, I. 29.*
- Ligonier, Lord, bearer of Lord Rawdon's challenge to the Duke of Richmond, II. 218.
- Lincoln, Earl of, Governor Clinton relative of, I. 1; attached to Gates's Army, 201; wounded, 207; lays siege to Savannah, 291; unsuccessful, and retires to Carolina, 292; taken prisoner, 353.
- Lispendar, Anthony, assists in seizing a sloop loaded with provisions for Boston, I. 39.
- Lispendar, Leonard, Jr., assists in the seizure of sloop loaded with provisions for Boston, I. 39; a governor and treasurer of King's College, a prominent abettor of rebellion, afterwards a Loyalist, 40; grantee of lands now in Vermont, 49; entertains Generals Washington, Lee, and Schuyler, 55.
- Livingston, Gilbert, one of the founders of the Presbyterian Church in New York, II. 390.
- Livingston, Gilbert (son of R. G.), Captain in Arnold's Loyal Legion, II. 407.
- Livingston, Henry, elected Member of Assembly for Dutchess County, I. 17; defeated by Derick Brinkerhoff in the Assembly, 18; one of the principal advisers of the Republican faction, 229.
- Livingston, Henry Brockholst, released from the provost, II. 223.
- Livingston, John, kills Captain Erasmus Phillips, I. 171.
- Livingston, John R., notice of, I. 665.
- Livingston, John W., Captain in Fanning's Loyalists, II. 406.
- Livingston, Peter R. (brother-in-law of William Smith), sends Alexander McDougal a present of wine, I. 27; called "Jew Peter," accompanies Alexander McDougal from the prison to the courthouse, 30; leader of party in favor of electing delegates to Continental Congress, 38; participant in movement in New York on receipt of news of battle of Lexington, 39; signs the association, 44; calls on Eastern delegates at New York, 46; one of the receivers of General Washington, etc., on landing

- in New York, 55; member of the Republican Club, 62; and others destroy edition of answer to "Common Sense," 64; countenances destruction of Rivington's printing office, 66; one of the principal advisers of the Republican faction, 229; proprietor of lands in Vermont, II. 212.
- Livingston, Peter Van Brugh, a leading Presbyterian, I. 2, 3; member of the Whig Club, 6; loses his election, 19; signs the association, 44; calls on Eastern delegates at New York, 46; member of the Republican Club, 62; instigates abuse of Lieutenant-Governor Colden, 224; incites opposition against Chief-Justice Pratt, 228; General Lord Stirling, his brother-in-law, a partner of, II. 300-580; Chancery suit against Lord Stirling, the latter's sworn answer, *ibid.*
- Livingston, Philip, elected Member of Assembly for New York, I. 17; Speaker of the Assembly, 18; late Speaker, re-elected to the Assembly, 19; delegate to Congress, 35; delegate to Second Continental Congress, 38; calls on Eastern delegates at New York, 46; owned lands in Tryon County, 72; north part of the manor of Livingston left to, 143; incites opposition against Chief-Justice Pratt, 228; a principal adviser of the Republican faction, 229; member of committee to examine suspected persons, II. 266; insists on a share in grant to Lachlan Campbell, 353.
- Livingston, Philip John, adheres to the King, appointed superintendent and manager of rebel estates, II. 16; particulars respecting, *ibid.*; calls for lists of rebels' estates, 17; his strong loyalty, *ibid.*, 406; manager of rebel estates within the British lines, 35; proceedings by, 36, 37; Governor Robertson receives rents of property belonging to, 46; construction put on the Prohibitory Act by, 52; never suggested that the city revenues should be paid to City Treasurer, 55; perversion of the order respecting rebels' estates by, 66; obtains a house and farm at Newtown, Long Island, 75; his pay as superintendent of rebel estates, 76; of opinion that the Colonists were out of the protection of the Crown, 98; Sheriff of Dutchess County, 112; holds an election for Members of Assembly, 114; construction put on Prohibitory Act by, 129; illegal proceedings and exactions of, 138; dared to deny the charges against him, 138; his right to seize on alleged rebel property questioned, 146; his salary, 164; sketch of, 406, 409.
- Livingston, Philip, Jr., Secretary to Governor Moore, I. 19.
- Livingston, Rev. Mr., calls on Eastern delegates at New York, I. 46.
- Livingston, Richard, accompanies Alexander McDougal from the prison to the court-house, I. 30; heads a party in favor of electing delegates to Continental Congress, 38.
- Livingston, Robert, first of the name in New York, how he enlarged his manor, I. 142; divides it between his sons, 143.
- Livingston, Robert (grandson of 1st Robert), introduces a bill in the Assembly to repeal charter of King's College, 16; south half of Livingston Manor left to, 143.
- Livingston, Robert Gilbert, rents of his property, II. 46; his son an officer in Arnold's Loyalist Corps, 47.
- Livingston, Robert Gilbert, Jr., arrested for his loyalty, and notice of, II. 407.
- Livingston, Robert R., member of the Whig Club, I. 6; elected Member of Assembly for Dutchess County, 17; replaced in the Assembly by Leonard Van Kleek, 18; Judge of Supreme Court, writes for American Whig, 20; signs the association, 43; his son kills Captain Phillips, 171; and boasts of the act, 172; instigates abuse of Lieutenant-Governor Colden, 224; and of Chief-Justice Pratt, 228; a principal adviser of the Republican faction, 229; when appointed Judge of Supreme Court, 230; commits suicide, 233; General Montgomery marries a daughter of, 309; opposed to independence, 712; reflections of John Jay on death of, 713.
- Livingston, Robert R., Jr., afterwards Chancellor of New York, writes for American Whig, particulars respecting, I. 20; delegate to Second Continental Congress, 38; proprietor of lands in Vermont, II. 212; describes parties in New York in 1784, 496; opposes Act of Attainder and writes *veto* of, 524-540.
- Livingston, William, character of, I. 3; member of the Whig Club, 5; counsel in the suit against Trinity Church for recovery of land in New York, 9; leader of the Republican faction, 13; signs a letter accompanying a pretended petition against the charter to King's College, 15; elected Member of Assembly for Livingston Manor, 17; accompanies Alexander McDougal from the prison to the court-house, 30; grantee of lands now in Vermont, 49; Colonel Hamilton communicates his opinion of General Howe to, 189; one of the leaders of the Republican cabal, 221; instigates abuse of Lieutenant-Governor Colden, 224; intrigues against Lieutenant-Governor Colden, 225; instigates opposition against Chief-Justice Pratt, 228; principal adviser of the Republican faction, 229; endeavors to have Mr. Smith, Senior, appointed second judge of Supreme Court, 231.

- approves of murder of John Richards, 280; publishes the *Independent Reflector* and *Watch Tower*, 392, 416; descendant of Anneke Jans, 413; made a kite for his son of one of the proclamations of the British commissioners, II. 173; grantee of land in Vermont, 212. Livingston Manor, origin and peculiar increase of, I. 142; privileges of, 143; most of its people Tories, II. 411; report of Committee of Provincial Convention on this fact, ibid.; Dutchess County Militia cannot be raised, nor even drafted, to support the American cause in 1776, 412.
- Livingstons, the head of one of the political parties in New York, II. 291, 559.
- Livingstons, the Tory, notices of, II. 406-413.
- Livius, Mr., Chief Justice of Quebec, offers to reward General Sullivan if he will give up Crown Point and Ticonderoga, II. 333.
- Lloyd, Henry, attainted, II. 269.
- Loan Office Act, annulled by Governor Robertson, as to New York, Staten Island, and part of Long Island, II. 129.
- Loggerheads, what they are, I. 180.
- Long Island, Washington takes measures to prevent communication between Staten Island and, I. 106; General Howe certifies to the loyalty of inhabitants of, 114; British refuse payment for cattle taken from Loyalists of, 116; New England men make a descent and plunder on east end of, 267; General Tryon commands an expedition to east end of, 287; inhabitants of plundered, 288; ill-treatment of the inhabitants of, 295; General Howe certifies to loyalty of inhabitants of, 330; quarter-masters cheat inhabitants of, 331 *et seq.*; General Clinton rebuilds the old fortifications on, 347; British soldiers plunder inhabitants of Queens County, 362; don't leave a four-footed animal in some towns, 363; a farm map of, ordered by Sir Henry Clinton, and partly executed, 365; the farmers ordered to deliver in half their crops of hay, 367; robbed of the remaining half by the British Army, 368; Court of Police established on, II. 2; Judge Ludlow appointed superintendent of the court, 12; inhabitants of west portion of, robbed of their hay, 28; abuses committed by the Court of Police on, 35; names of the counties and towns of, 166; former courts of, 167; ill consequences of establishing a court of police on, 168, 169; amount raised from Staten Island and, 143; names and salaries of officers of police on, 162.
- Loring, Joshua, Commissary of Prisoners, particulars respecting, I. 351; prevails on General Patterson to turn one Hicks out of a house he had hired in New York, II. 86; General Silliman's mention of him, 425, 565.
- Loring, Mrs., General Howe passes his time at New York in the arms of, I. 171; General Howe returns to New York from New Jersey to the arms of, 189; engrosses the attention of General Howe, 253; wife of Joshua Loring, and General Howe's mistress, 351; General Howe "might as well have presented her with Rhode Island," II. 57; the Cleopatra of Sir William Howe, and the cause of his loss of honor, etc., 87.
- Lorings, the, who they were, and particulars respecting, II. 423.
- Lott, Abraham, heads an anti-Loyalist mob in New York, I. 101.
- Lotteries, private, for benefit of refugees, authorized, II. 149; illegal proceeds appropriated by Governor Robertson, 150.
- Loudon, Samuel, outrage on his press, I. 64, 65, 566; how appointed first State printer, 568; publishes proceedings relative to the application of Vermont to return to its allegiance to the King, II. 211.
- Lovel, General, marches to the relief of Penobscot, I. 297; is defeated by the British, 298.
- Low, Isaac, Chairman of the New York Committee of Correspondence, I. 34; delegate to Congress, 35; delegate to 2d Continental Congress, 38; presides at meeting called to sign the association, 42; denounces the King, whom he denounces, and signs the association, 43; calls on Eastern delegates at New York, 46; owned large tract of land in Tryon County, 72; one of the Board of Commissioners for the settlement of debts due to Loyalists, II. 125; attainted, 269, 306; his case considered, 287; Chairman of the New York Committee of Correspondence, 360.
- Loyalists, New York, vote for delegates to the Continental Congress of 1774 and instruct them, I. 35; deceived by its action, they oppose election of delegates to that of 1775, 37; ridden on rails in New York, 101; denounced as Tories, 102; some leading ones transported to New England, 109; names of some of those who were robbed and ill-treated, 268; the Honble. Board of Associated, established, 300; strictures on the, 303 (See Vol. II., p. 481); hanged in New Jersey, 364; numbers of, attainted, II. 124; unable to collect their debts, and obliged to leave the country, 125; mortgages held by them not paid, 126; in Cornwallis' army excluded from the terms of surrender, 195; sent to New York in a despatch boat, 196; expatri-

ation and sufferings of the, 235; harsh treatment of, 236-244; case of, referred to the State Legislatures, 245; bad policy of driving them out of the country, 246; outlawed by New York, 248; heavily and unequally taxed, 249; many of them indicted for treason, 251; amerced for rent if occupants of premises owned by rebels, 252; obliged to pay for timber cut on rebels' farms, 253; the cause of the non-payment for Negroes, 257; number of, sent from New York, 260; where sent to, ibid.; apply to General Carleton for relief, 265; condition of the wealthy, before the revolution, 267; names of those who were attainted, 269; Governor Clinton a bitter enemy of the, 330; tarred and feathered and otherwise persecuted, 327; vote against proceedings of Congress, 328; names of members of the commission to collect debts due to, 454; Associated Board of, what it was, and its objects, 481; sacrificed by British Government to obtain peace; details of the negotiations in regard to, 497; severe laws of New York touching, 500 (see *New York State*); number of, who left the State, 504; persecution of, 505; compensation of British Government to, 645.

Ludlow, Colonel Gabriel, commands the third battalion of De Lancey's brigade, I. 265; his house plundered, 268; obtains a rebel farm at Jamaica, II. 75; attainted, 269.

Ludlow (Oliver Cromwell's), General, toasted by the Whig Club, I. 6; ancestor of Judge Ludlow of the Supreme Court, 232.

Ludlow, George Duncan, attainted and

his estate confiscated, I. 150; succeeds William Smith, Senr., on the bench of Supreme Court, 231; recommended by Colden, 232; his ancestors, ibid.; Wm. Smith, Jun., appointed Chief Justice over the head of, 235; his house broken open and plundered, 268; chagrined at the promotion of William Smith to be Chief Justice over his head, resigns his commission, II. 10; appeased by other appointments, 12; empowered to grant recommendations for purchase of goods, 15; attainted and goes to England, ibid.; appointed Chief Justice of New Brunswick, 16; prostitutes his office, 22; objects to reopening of civil courts, 24; Superintendent of Police on Long Island, 35; abuses in his court, 37; of opinion that the Prohibitory Act placed all the colonists out of the protection of the Crown, 98; Joseph Galloway ingratiate himself into the good opinion of, 110; sits in the Supreme Court in 1776, 112; signs petition for revival of civil law, 117; opposed to opening civil courts, 119; Superintendent, or Judge of Court of Police, arbitrary power exercised by, 154; his salary, 162; attainted, 269; his case considered, 288; note on, 398.

Lutherans in New York, I. 2

Lutwyche, Commodore, convoys the troops under Burgoyne, and destroys the American fleet on Lake Champlain, I. 199.

Lynch, Mr., delegate from South Carolina to the Continental Congress, thanks God the Rubicon is passed, I. 36.

Lyttleton, Lieutenant, one of the esquires at the Mischianza, I. 246.

## M.

McADAM, William, attainted, II. 269. McClean, General, occupies Penobscot, I. 296.

McCrea, Miss, her murder mentioned, I. 187, 281.

McDonald, Allan, and others hostages to General Schuyler for the paroles of Sir John Johnson's Scotch tenants, I. 582; faith broken with him and them, 587.

McDonald, Captain Donald, commissioned Brigadier-General of North Carolina Loyalists, I. 95; his force defeated and himself taken prisoner, 96, 98.

McDougal, alias "Milkman John," an Islay Scotch milkman, chosen pastor of a Presbyterian meeting in New York, I. 24; his son Alexander, in the same business, made its clerk, 25; one of Lachlan Campbell's emigrants, II. 353. McDougal, Alexander, assists his father,

and his early career, I. 25; author of a libel against the Government, 26; particulars of his indictment and imprisonment for, 27-32; how he escaped punishment, 33; how the libels were posted, 426; account of him and his arrest, and his own statement, 426-436; as a committee, calls on William Smith to sign the association, 44; is satisfied with Smith's reasons for declining to sign, 45; calls on the Eastern delegates, 46; Colonel of a New York Continental Regiment, 59; member of the Republican Club, 62; and others destroy the edition of the answer to "Common Sense," 64; countenances the destruction of Rivington's printing-office, 66; General Washington confers with as to the propriety of giving a pass to Mrs. Jones to go to Long Island, 104; member of board for trying Loyalists, 109;

- and others obtain the keys of the Custom House, 166; instigates abuse of Lieutenant-Governor Colden, 224; his address "To the Betrayed Inhabitants of New York," 426; Governor Colden's report on, 431; Judge Jones brought before, II. 297.
- McEvers, Charles, Governor Robertson violates a promise given to, II. 12; as Treasurer of Long Island Court of Police obtains a tract of woodland, 76; Treasurer of Court of Police, salary of, 162.
- McGregor, Rev. David, declines a call to New York, II. 394.
- McIntosh, Mrs., who joined the Pretender at the head of her clan was never attainted, II. 274.
- Maitland, Colonel John, in command at Savannah, I. 291; his gallant defence of the place, 292; death and poetry on, and notice of, 725.
- McKenzie, Roderick, his account of the case of Colonel Hayne, II. 213.
- McKnight, Patrick, one of the founders of the Presbyterian Church in New York, II. 390.
- McLeod, Colonel, killed, I. 96.
- McNeil, Mrs., her account of Miss McCrea's murder, I. 281.
- Makemie, Rev. Francis, II. 390.
- Malagrida, Lord Shelburne called, I. 298; II. 237; why, 489.
- Mallet, Dr. Jonathan, intercedes for a citizen sentenced to be flogged, II. 83.
- Mansfield, Sheriff, Benedict Arnold marries a daughter of, I. 375.
- Marine Society exercises its functions during the occupation of New York by the British, II. 53; its loyalty, and particulars respecting, 422.
- Martin, Dr. Samuel, carried prisoner to Philadelphia, I. 68.
- Martin, Governor, of North Carolina, commissions Captain McDonald Brigadier-General, I. 95; retires on board a man-of-war, 97.
- Martin, Dr., of Queens County, a decided Loyalist, I. 308.
- Maryland deprives the heir of Lord Baltimore of all proprietary rights, I. 328.
- Mason, Rev. John, calls on Eastern delegates at New York, I. 46; called to New York, II. 395.
- Massachusetts, the General Court refuse to rescind a vote of theirs at the desire of Lord Hillsborough, I. 28.
- Masshouse, Acadian, plundered and burned, II. 309.
- Master of the Rolls, Judge George D. Ludlow appointed, II. 12; emoluments and rank of, *ibid.*
- Mathews, Captain, one of the Knights at the Mischianza, I. 245.
- Matthews, David, Judge of the Court of Police, an ignoramus in matters of law, II. 22; issues execution against the committee of Huntington in favor of two counterfeiters, 31; gets some of the money, 32; police magistrate, *ibid.*; appropriates to his own use the revenues of the City of New York, 50, 55; humanity unknown to the hardened heart of, 59; takes an affidavit against Colonel Floyd, 95; of opinion that the Prohibitory Act placed all the colonists out of the protection of the Crown, 98; Joseph Galloway worms himself into the good graces of, 110; held the Mayor's Court in 1776, 112; advises establishment of Court of Police, 120; one of its judges and his character, 121; gives "damned good dinners," 122; responsible to no authority, 122; one of the principal contrivers of the establishment of the Court of Police, 123; as Mayor of New York, extorts illegal fees, 128; arbitrary proceedings of, 138; Deputy-Superintendent of Police, salary of, 162; attainted, 269; why, 287; further particulars respecting, 416.
- Mathews, General, commands the land forces sent to Virginia, I. 295.
- Meigs, Lieut.-Colonel, surprises a party of provincials at Sag Harbor and takes them prisoners, I. 180; biographical sketch of, 181; does not violate his parole; notice of, 668.
- Menzies, Major, taken prisoner, I. 54.
- Middleton, Dr., his daughter loses £1,500 loaned to Corporation of New York, II. 60.
- Middleton, Miss, loses £1,500 loaned to the City, II. 60.
- Miles, Major, marries a niece of Colonel Axtell, I. 308.
- Military oppression, instances of British, II. 81 *et seq.*
- Ministry, act for settling a. in New York, etc., passed, I. 6; text of act for settling a. 392; act for the settlement of, but partially in force during the war, II. 128.
- Mischianza, the, description of, I. 242; a ridiculous farce, 261; note on and particulars of, 716.
- Montgomerie, Governor, calls James de Lancey to the Council, and appoints him puisne judge, I. 155.; grants a charter to city of New York, II. 48.
- Montgomery, General, biographical sketch of, I. 309; killed, 310; full notice of, 727; invites General Schuyler to join him, II. 318; Colonel Holmes accompanies, 335; John Lamb accompanies, 343; Donald Campbell serves in expedition of, 356.
- Montluisant, Lieutenant, one of the knights at the Mischianza, I. 247.
- Moncton, General, appointed governor; reduces Martinico and returns to New York, I. 225; appoints judges of Su-

- preme Court, 230 ; captures Fort Beau-sejour, II. 308.
- Montressor, Major, reports impossibility of forcing Washington's lines near New Brunswick, I. 187 ; one of the managers of the Mischievous, 242.
- Montresor, John, chief engineer, makes a fortune, and sets up a splendid establishment in England, I. 347.
- Moore, Sir Henry, Governor, I. 18 ; death of, 19 ; secures the support of George Clinton in the Assembly, II. 326.
- Moore, John, clerk in Custom-house, his salary, II. 163 ; his salary as private secretary to Superintendent-General of Customs, *ibid.*
- Moore, Lambert, Deputy Superintendent of Exports and Imports, II. 163 ; why he was not attainted, 287.
- Moran, James, clerk in Custom-house, his salary, II. 163.
- Moravians in New York, I. 2.
- Morgan, Colonel, pursued by Colonel Tarleton, II. 185.
- Morris, Colonel, of Morrisania, particulars respecting, I. 138.
- Morris, Gouverneur, notice of, I. 140 ; member of committee to examine suspected persons, discharges Judge Jones, II. 296.
- Morris, Lewis, delegate to Second Continental Congress, I. 38 ; member of the Republican Club, 62.
- Morris, Lewis, Governor of New Jersey, inherits his uncle's property, I. 138 ; further particulars of, 139 ; anecdotes of, 140.
- Morris, General Lewis, notice of, I. 139.
- Morris, Lewis, Judge of the Admiralty, notice of, I. 139.
- Morris, Lewis, Chief Justice of New York, dismissed, I. 155.
- Morris, Mrs. Mary, attainted, I. 152 ; II. 269.
- Morris, Richard, member of the Republican Club, I. 62 ; notice of, 139, 140 ; proprietor of lands in Vermont, II. 212.
- Morris, Robert Hunter, notice of, I. 139 ; candidate for the chief justiceship of New York, particulars of, 223 ; reason for not appointing him, 224.
- Morris, Roger, attainted, I. 151, II. 269 ; his wife attainted, I. 152 ; why attainted, 271.
- Morris, Staats Long, particulars respecting, I. 139.
- Morrisania, manor of, I. 138.
- Morris family, sketch of, I. 138.
- Morris library, plundered by the British, I. 138.
- Morrison, Malcolm, attainted, II. 269, 285.
- Morristown, General Washington fixes his headquarters at, I. 170.
- Mortgages held by Loyalists not to be paid, II. 126.
- Mount Washington, capture of the fort at, the result of the treason of William Demont, Adjutant of its Commander, I. 626-635.
- Moylan, Stephen, states that Washington regularly received copies of the reports of the strength of the British army made to its commander-in-chief, II. 210.
- Moylan, Col. Stephen, who, II. 470.
- Mostyn, General, Governor of Fort St. Philip, Minorca, punished for arbitrary conduct, II. 141.
- Murders committed with impunity, II. 92 *et seq.*
- Muirson, George, attainted, II. 269 ; his case considered, 288.
- Mud Island, Americans abandon, I. 193 ; three British ships lost in the attack on, 261.
- Murray, Captain, Governor Robertson's secretary, son of the Pretender's secretary, II. 157.
- Murray, General, burns villages in Canada, II. 311 ; goes bail for Donald Campbell bell and pays the debt, 355.
- Murray, Rev. John, called to New York, II. 395.
- Murray, Joseph, Member of the Council, I. 12 ; notice of, 136.
- Musgrave, Colonel, checks the advance of the Americans on Philadelphia, I. 194.

## N.

- NAMES and salaries of officers of Courts of Police, II. 162 ; of office of Superintendent of Exports and Imports, 163.
- Nash, General, killed at Germantown, I. 195.
- Nassau Hall, N. J., plundered by British soldiers, I. 137.
- Negroes, runaway, employed as drivers, sign receipts by marks for money due their masters, I. 334 ; two thousand of them come to New York on proclamation of Governor Clinton, II. 76 ; non-compliance with the clause in the treaty of peace respecting, 256 ; why, 257.
- Neutrals, the Acadian, their houses burnt and property plundered, II. 309 ; transported, 310 ; why, 311, the facts of their case, 575.
- New London plundered and burnt by the advice of William Smith, II. 208.
- Newark, Generals Washington, Rochambeau, and others, unmolested, dine at, II. 206.
- New Brunswick, Province, Judge George Duncan Ludlow appointed Chief Justice of, II. 16.
- Newcastle, Duke of, Governor Clinton, of the Province of New York, a relative

- of, I. 1; rewards one of his political supporters by appointing him Attorney-General of New York, 31.  
 New England, inconsistent conduct of the Puritans of, II. 250.  
 New Hampshire grants, controversy respecting, I. 48.  
 New Haven, a party of men from, destroy Rivington's printing-office, I. 66; college at, plundered, 137.  
 New Jersey, Washington retreats across, I. 125; Lewis Morris, Governor of, 139; Robert Hunter Morris, Chief Justice of, *ibid.*; General Howe suppresses a plan for seizing state officers of, 238.  
 Newport (R. I.), siege of, I. 275.  
 New Rochelle, inhabitants of, loyal, II. 69.  
 New York City, Members of Assembly for, I. 18; Messrs. Cruger, de Lanney, Walton, and Jauncey, Members of Assembly for, 37; Members of Continental Congress from, 38; excitement in, on receipt of the news of the battle of Lexington, 39; Arsenal in City Hall broken open and arms plundered, 40; reception of the Eastern delegates to Continental Congress at, 45, 46; General Lee assumes command at, 82; General Washington arrives with his army at, 83; threatened to be burned if taken by the British, 84; headquarters of General Washington, 101; Loyalists ridden on rails in, *ibid.*; Provincial Convention of, meet in City Hall, 102; Provincial Convention quits, 110; American Army retreats to, 112; the British take possession of, 120; the burning of, 120; harbor frozen over, and horses and loaded sleighs cross on the ice, 321; preparations for the defence of, 322; public buildings converted into barracks in, 337; barricades and military works erected in streets of, 346; all the demolished forts rebuilt on island of, 349; 2,000 volunteers for the British fleet procured in, 358; resolution of Continental Congress on defence or destruction of, 593; persecution of Tories in, 596; strength of the armies at, in August, 1776, 599; retreat of the Americans from, and landing of the British Army at, 604; account of the great fire in, 611; talked of in August preceding, *ibid.*; women and children removed from, *ibid.*; the true facts concerning, 613-619; Court of Police established in, II. 2, 18; charters granted to, 48; provisions thereof, 49; debt of, 50; Mayor and Governor appropriate to their own use revenues of, 55; how disposed of, 56; repudiates its debt, 60; a respectable citizen flogged for having quarrelled with a subaltern, 83; inquiry whether it was a garrison? 134; an ancient city, 135; privileges granted by its charter, 136; no general or governor had a right to shut up the courts in, 137; Court of Record granted to, 138; civil law in full force under General Washington in, 135; revenues of, 143; names and salaries of officers of Courts of Police of, 162, 163; loyal conduct of the inhabitants highly approved, 180; strength of garrison, 184; Washington could not capture, 185; number of Loyalists sent from, 260; effect of the evacuation of, 261; fourth part of burned, 307; burned a second time, 308; Sir Wm. Howe gives David Matthews the revenues of, 416; names of municipal officers in 1776, 419; effort of its citizens to have civil government restored, 433; their petition for it to the Howes, the British Commissioners for restoring peace, 436; names of its signers, 437-451; city funds or revenues during the war and their amount, 458; address to Governor Tryon of inhabitants to present the petition of, 454; his reply, 453.  
 New York Colony in 1752, happy state of, I. 1.  
 New York State, proceedings of the legislature nullifying Article V. of the Treaty of Peace of 1783, II. 492.  
 New York and New Hampshire controversy, I. 543.  
 Nicoll, Benjamin, withdraws as a candidate for Attorney-General in favor of John Tabor Kempe, I. 31.  
 Nicoll family, notice of, I. 31, 32.  
 Nicoll, William, of New York Assembly, votes against approving proceedings of Continental Congress, I. 37; his premises plundered, 268; omitted from the Act of Attainder, II. 281.  
 Ninety-six, fort, unsuccessfully besieged by General Greene, II. 187; subsequently abandoned and destroyed, 188; full account of Col. John Harris Cruger's gallant defence of, 378.  
 Norfolk burned, II. 307.  
 North, Lord, Sir William Howe opposes, I. 251; Lord Howe curses, 261.  
 North Carolina, insurrection of the Regulators in, II. 5; suppressed, 6; the British lose, 189.  
 Newcastle, American army retire to, I. 123; houses burned in, II. 307.  
 Norwalk burned, II. 307.  
 Nova Scotia, nearly one-third of the inhabitants of Queens County remove to, I. 108; Loyalists remove to, II. 235; case of the neutral French in, 313, 575.  
 Nowlan, Thomas, Governor Robertson's gardener paid out of the city revenues, II. 56.  
 Nugent, John, Custom-house officer, his salary, II. 163.  
 Nutten (now Governor's) Island, American garrison removed from, I. 113

## O.

- O'HARA, Colonel, one of the managers of the Mischianza, I. 242.  
 Okely, Lieutenant Israel, three hundred bushels of oats belonging to him wantonly destroyed, II. 88.  
 Onderdonk, Hendrick, as great a rebel as existed, I. 294; member of the Queens County Convention, II. 305; not included in Act of Attainder, 306.  
 Orange County, Samuel Gale member of Assembly for, I. 37; Henry Weisner delegate to Continental Congress from, 39.  
 Oriskany, General Hercheimer killed at the battle of, I. 217; battle of, *ibid.*; its effect, 700.  
 Osborne, Sir Danvers, death of, I. 156.  
 Osborne, Sir George, meditated attack on the British at Germantown mentioned to, I. 194.  
 Oswald, Richard, commissioner to conclude a treaty of peace with America, II. 237; allows John Jay to dictate the form of his commission, *ibid.*; who he was, 487; how John Jay drew up his commission as British negotiator of the treaty of peace, 491.  
 Oyster Bay, instance of arbitrary powers exercised by Court of Police at, II. 154.

## P.

- PARKER, JAMES, printer, removes to New Jersey, and dies there, I. 33.  
 Parker, Major, plundered and carried prisoner to Connecticut, I. 269.  
 Parker, Sir Peter, arrives with fleet at Cape Fear River, I. 98; is defeated at Sullivan's Island, near Charleston, 99; conveys the army under Clinton to Staten Island, 103; fleet despatched to Rhode Island under command of, 129; Lee defends Sullivan's Island against attack of, II. 351.  
 Parsons, General, lays siege to a fort at Brookhaven, I. 182; fails to reduce it, and returns to Connecticut, 183; notice of, 183, 184; detaches Major Talmage against banditti on Long Island, II. 33.  
 Parties, political, in New York before the Revolution, and their names, II. 291, 559; after the peace, 496.  
 "Patriotic Billy," sobriquet of William Smith, I. 30.  
 Patterson, (or Pattison) General James, permits inhabitants of New York to arm in defence of the city, I. 322; commandant of New York, ousts one Hicks from premises hired from Captain De Lancey, II. 86; resigns as commandant of New York, and returns to England, 165; communicates to the citizens of New York his Majesty's approbation of their loyal conduct, 180; thanks them for their services, 181.  
 Peace, treaty of, abstract of the, II. 238; why fifth provisional article of, was nullified, 246; why clause in the treaty respecting negroes was not complied with, 257; its singular negotiation, why Article V., relative to the Loyalists, was inserted, the signing of it, 497, 500; full text and ratifications of, 664, 665.  
 Peekskill, American stores destroyed at, I. 177; houses burned in, II. 307.  
 Pemberton, Rev. Ebenezer, called to New York, II. 393.  
 Penn, Governor John, a prisoner, I. 238; Governor of Pennsylvania at the commencement of the rebellion, 326.  
 Penn, Richard, one of the Pennsylvania proprietors, I. 326; examined before the House of Lords, 327.  
 Penn, William, Pennsylvania granted to, I. 325.  
 Pennsylvania, Robert Hunter Morris Governor of, I. 139; annual value of it to the Penn family for their proprietary rights, 327; compensation paid to Penn family for it by British Government, II. 662.  
 Pennsylvania line, reject terms offered by General Clinton, and hang his ambassadors, II. 183. (See *Philadelphia line.*)  
 Penobscot taken by the British, I. 246; restored to the Americans, 290.  
 Pepperell, General, commands expedition against Cape Breton, I. 178; created a baronet, 179.  
 Peters, Captain, esquire at the Mischianza, I. 245.  
 Peters, Hugh, toasted by the Whig Club, I. 6.  
 Peters, Lieut.-Col. John, of Queen's Loyal Rangers, insulted by Burgoyne, I. 682; his defence of the Canadian Provincials, 683; his numbers at battle of Bennington, 685; notice of, 686; memorial to Lords of Trade throws new light on Burgoyne's disaster, 687; Burgoyne's official letters, orders, and certificates to, 690, 691; letters of Samuel Peters, Governor Tryon, and Chief-Justice Wm. Smith to, 692, 693. (See *Burgoyne.*)  
 Petition of the inhabitants of New York City for the restoration of Civil Government, II. 430.

- Philadelphia, Continental Congress meets at, I. 34; Congress retires from, 131; people of, recommended by Congress, in 1776, to apply for protection to Sir Wm. Howe, 127, 636; officers and magistrates of, in 1778, advised by Sir Wm. Howe to go to Washington and make their peace with Congress, 239, 714; the British ordered to evacuate, 239; great fête in honor of General Howe at, 241. (See *Mischianza*.)
- Philadelphia line, mutiny of, II. 179. (See *Pennsylvania line*.)
- Philipse, Frederick, of New York Assembly, votes against approving proceedings of Continental Congress, I. 37; attainted, II. 269; case of, 271, 276, 288; victim of revenge, 291; his case similar to that of Judge Jones, 305.
- Philipse, Frederick, Jr., attainted, II. 269; why attainted, 281.
- Phillips, Captain Erasmus, killed, I. 171; indignities offered to the body of, 172; notice of, 666.
- Phillips, General, takes command of the British army in Virginia, II. 179; death of, 189; strength of his command, 192.
- Phillips, —, overseer of Wm. Floyd's property on Long Island, I. 292; arrested and placed under bonds, 293.
- Pictures, valuable, in City Hall plundered, I. 136.
- Pine, Daniel, Court of Police order his property seized, II. 39.
- Pintard, Samuel, of New Rochelle, particulars respecting, II. 68; ill-treatment of, 69; retires to Jamaica, L. I., and thence to Madeira, 70.
- Polhemus, —, his field of corn destroyed by a loyal conductor, II. 88.
- Police, Courts of. (See *Courts*.)
- Polopels Island, chevaux de frise below, removed, I. 219.
- Pouchot, M., defends Fort Niagara, II. 368.
- Pownal, Thomas, succeeds Governor Shirley of Massachusetts, II. 321.
- Pratt, Benjamin, appointed Chief Justice, his character, I. 226; ignorant of the practice of the courts and laws of the Colony, 227; highly unpopular, and excluded from society, 228; brother-in-law of Rev. Samuel Auchmuty, Ibid.; death of, 230.
- Presbyterian Church, origin of, in New York, II. 389; internally contentious from its origin to the Revolution, 393.
- Presbyterian Meeting House on Long Island plundered for the benefit of General Birch, II. 74.
- Presbyterian party, the, dubbed with the name of the "Whig Interest," I. 18.
- Presbyterian rebel, Sir Guy Carleton the dupe of a, II. 266.
- Presbyterians in New York composed generally of the middle classes, I. 2.
- Presbyterians support the Livingston party, and the Episcopilians the de Lancey party, in New York, II. 271.
- Prevost, Colonel, assumes command in the South, I. 290; general, retires from before Charleston, 291.
- Pridaux, General, killed, II. 339, 367.
- Prime, Doctor, writes for the American Whig and Watchman, his character, I. 20.
- Prime, Rev. S. Irenaeus, declares Presbyterianism and Republicanism identical, II. 397.
- Princeton, N. J., General Washington halts at, I. 125; library, etc., of Nassau Hall plundered, 137.
- Printer, life of the, who informed against Alexander McDougal, threatened, I. 32; flies to Boston and thence to England, 33.
- Prison ships, American, at Esopus, I. 705; horrid treatment of the prisoners in, 706-710.
- Privateers fitted out in Connecticut, II. 299.
- Proclamation, official, establishing Courts of Police, II. 426.
- Proclamations, generals and governors thought that America could be conquered by, II. 173; treated with contempt, *ibid.*
- Prohibitory Act, provisions of, II. 52; construction put on it by Governor Robertson and others, *ibid.*; title and provisions of, 99; construction put upon it, 121; such construction a mere pretence, 126; conflicting construction put on, 129; further consideration of, 133, 134; British, what it really was, 427.
- Provincial Congress, New York, sit at Fishkill, I. 78; refuse Lady Johnson leave to retire to New York, *ibid.*; names of delegates for New York to, 489; order of, for the double reception of General Washington and Governor Tryon, 555.
- Psalms, difference respecting versions of, in the Dutch Church, II. 393.
- Puritans of New England, inconsistent conduct of the, II. 250.
- Putnam, General Israel, notice of, I. 102; offers his services to General Gage, *ibid.*; attempts to stop personal insults to Loyalists, 103; surprised at the inactivity of Howe after the Battle of Long Island, 119; is of opinion that the British can capture Albany, 219.

## Q.

**QUAKERS** in New York, I. 2; two in Philadelphia indicted for treason, 282; found guilty and hanged, 283; note on their cases, 724.  
**Quaker meeting house** at Secatogue pulled down and materials appropriated by General Birch, II. 73.  
**Quamino**, a negro, Micah Williams arrested for kicking, II. 85.  
**Quarter-masters.** (See *Commissaries*).  
**Quebec**, Americans abandon siege of, I. 89; William Smith appointed chief justice of, II. 114.  
**Queens County**, David Jones member of

Assembly from, I. 13; Daniel Kissam member of Assembly for, 37; not represented in Second Continental Congress, 38; inhabitants of, disarmed, 68; placed under the ban by Congress and outlawed, 107; troops sent to coerce, 108; nearly one-third of the inhabitants remove to Nova Scotia, 108; Ludlow's Loyalist regiment composed exclusively of inhabitants of, I. 265; proceedings against the disaffected in, 568-573; taxed to support refugees, II. 158.

## R.

**Rahl**, General, in command of Hessians at Trenton, I. 129, 168; killed, 169.  
**Randall**, Thomas, member of committee to examine suspected persons, II. 296.  
**Rapalje**, John, elected Member of Assembly for Kings County, I. 18; votes against approving proceedings of Continental Congress, 37; superseded by William Axtell as colonel of militia in 1772, 307; attainted, II. 269; case of, 271, 276; why attainted, 281; his case considered, 288; victim of malice, 290; his case similar to that of Judge Jones, 305; John Lamb purchases the confiscated estate of, 343.  
**Rawdon**, Lord, volunteers to serve on board Lord Howe's fleet, I. 274; left in command at Camden, 386; stationed at Camden, II. 185; attacked by General Greene, and abandons Camden, 187; Colonel Hayne taken to Charleston whilst held by, 214; taken prisoner by the Count de Grasse, and asked to be surrendered to Congress, 215; request refused, and his lordship returns to England, 216; charged with being the murderer of Colonel Hayne, 216; challenges the Duke of Richmond, who apologises, 217; his correspondence with the Duke of Richmond, 218-220; advises Colonel Cruger to abandon Ninety-Six, 376; relieves the fort, 382.  
**Ray's History of the Scotch rebellion** quoted, II. 273.  
**Recorder of New York**, Thomas Jones appointed, I. 232.  
**Red Bank**, reduced, I. 193.  
**Redman**, Misses, ladies of honor at the Mischianza, I. 245, 247.  
**Reed**, Joseph, adjutant-general, member of board for trying Loyalists, I. 109; Adjutant-General, II. 297.  
**Refugees** within the British lines, authorized to harass and plunder the enemy, I. 300; their operations, 301; and mode

of operating, 302; from Rhode Island, plunder inhabitants of Suffolk County, New York, II. 33; taken prisoners, 34; on Long Island, number of, 181; loyalist's houses and lands and those of rebels to be applied to the use of, 427.  
**Regulators**, account of the insurrection of, II. 5; defeated at the Alamance, 6; futile attempt of Congress to get them to join the Continental Army, 7; being chiefly Presbyterians, Drs. Rodgers and Caldwell, Presbyterian clergymen, sent to sap their allegiance, 8; how they did it, 9.

**Religious denominations in New York**, I. 2.

**Remsen**, Colonel, commissioned by Congress, II. 305; not included in Act of Attainder, 306.

**Revenues**, city, what constituted, and amount of, during the war, II. 143-154; their Treasurer and his reports, 458-460.

**Review of military operations in North America**, authorship of, I. 436.

**Rhode Island**, the British reduce, I. 129; motive of the movement against, 130; evacuated by the British, 315; Americans occupy, 317; French fleet arrives at, 358; expedition a mistake, 639; the French army march from, to join Washington, II. 202.

**Richards**, John, murdered, and his body despoiled by Americans, I. 280; his murderer arrested and exchanged, 281; note on murder of, 723.

**Richmond County**, Messrs. Seaman and Billop, Members of Assembly for, I. 37; not represented in ad Continental Congress, 38.

**Richmond**, Duke of, letter to Congress brought from, I. 88; brings the case of Colonel Hayne before Parliament, and accuses Lord Rawdon of having murdered him, II. 216; is challenged, and apologizes, 217; correspondence be-

- tween Lord Rawdon and, 218-220; peace with America, the bantling of, 262.
- Riscola, William, Assistant Wharfinger, his salary, II. 163.
- Ritzenma, Domine, minister of Dutch Church in New York, I. 45.
- Ritzenma, Rudolphus, captain of fusiliers, escorts Eastern delegates into New York; particulars and character of, I. 45; appropriates the colors of the Governor's Guards for his own rebel company, 55.
- Rivington, James, printer, becomes obnoxious to the friends of Congress, I. 65; his printing office destroyed, 66; causes of the quarrel of Isaac Sears with, 561.
- Rivington, a New York bookseller, takes in a number of persons by a lottery, II. 323.
- Roberts, John, a connection of the Earl of Halifax, High Sheriff of New York, I. 29; death of, 30.
- Roberts, John, of Philadelphia, indicted for treason, I. 282; found guilty and hanged, 283; account of his execution, 724.
- Robertson, General, goes to England and testifies against Sir William Howe, I. 161; makes insinuations against Governor Tryon, *ibid.*; is expected to re-establish civil law in New York, *ibid.*; biographical notice of, 162; clips coins, *ibid.*; appointed Governor of New York, 163; his physical and moral character, 164; most unpopular appointment, 165; one of the commissioners for restoring peace, 167; Commander-in-chief at New York, 266; made Civil Governor of the Province of New York, 294; orders inhabitants of Staten and Long Islands to cut and deliver wood for the army, 339; frauds connived at by, 341; requires the farmers of Long Island to deliver half their crops of hay, 367; sent to intercede for André, 376; his success in reclaiming rebels, 381; informs General Washington that General Clinton was resolved to hang hostages in case of Major André's execution, 382; returns from England with a commission as Governor of New York, II. 1.
- Robertson, Governor, plan for restoring the Brick Church, in the middle of the war, to the Presbyterians, II. 3; his antecedents, 14; divides the profits of Superintendent of Exports with others, 15; establishes military Courts of Police, 18; procures appointment of Judge Ludlow to be Chief Justice of New Brunswick, 16; orders seizure of rebels' estates, 16; orders the wood on the estates of Messrs. Floyd and Smith, of Suffolk County, to be cut down, 26; orders half the hay on west part of Long Island to be cut for the use of the army, 27; all the hay sequestered, 28; neglect of the Holland children by, 40; held a mortgage on Philip J. Livingston's property, 46; authorizes refugees to occupy Eaton's Neck, Long Island, 47; said to receive rent for the land, 48; orders rents of ferries, markets, slips, and houses belonging to corporation to be paid to City Treasurer, 51; construction put on the Prohibitory Act by, 52; humanity unknown to, 59; instances of the perversion of his order respecting the possession of rebel estates, 66; income and perquisites of, 67; has an interest in an auction house, 67; neglects to give redress to one Hicks, who was illegally turned out of his house, 86; of the opinion that the Prohibitory Act placed all the Colonists out of the protection of the Crown, 98; shares fees of Prerogative Court, 104; Joseph Galloway ingratiate himself into the good opinion of, 110; sequesters city revenues, 127; establishes courts by mere *ipse dixit*, 131; called on to deny the charges brought against him, 138; arbitrary proceedings of, *ibid.*; abolished city courts, 139; alleges that he had orders to seize and rent rebels estates, 144; illegality of his proceedings demonstrated, 146, 147; pretends that he acts under orders from Lord Germaine, 149; Loyalists obliged to pay rents he pocketed, 149; appropriates proceeds of private lotteries, 150; Captain Murray, Secretary of, 157; promises to revive the civil law, and fails to do so, 165; succeeds General Pattison as commandant of New York, *ibid.*; contrast between his conduct and that of Governor Tryon, 166; publishes an extract of a letter from Lord Germaine approving of the conduct of the inhabitants of New York, 180; appointed to the command of the army in Virginia, 189; sails as far as Sandy Hook and returns to New York, and fribbles his time with little girls, 190; partiality shown to, 271, 284; instructions to, 399; order for him to seize rebel estates, 400; ordered to revive civil law, 401; refuses to do so and conceals the orders, 402; William Smith his adviser and private agent, 403; not attainted, and how his estate was preserved at the peace, *ibid.*; of what it consisted, 404-406.
- Robine, Abbé de, his comments on Burgoyne's operations, I. 198; his comments on the conduct of Lord Cornwallis, II. 197; states that the British never attempted to intercept the French in their march to join Washington, 202; further remarks of, 204; his statement of the case of the neutral French of Acadia, 313.

- Robins, Ezekiel, imprisoned for being seen in bad company, II. 87.  
 Robinson, Colonel Beverly, sent to settle preliminaries with Arnold for the surrender of West Point, I. 370; vindicates Major André, 376; mentioned, 741; attainted, II. 269; why, 271.  
 Robinson, Beverly, Jr., attainted, II. 269.  
 Robinson, General, points out the mistake made by General Howe after the reduction of forts Washington and Lee, I. 131.  
 Robinson, Susannah, wife of Beverly, attainted, I. 152, II. 269.  
 Rochambeau, General, at White Plains with General Washington, I. 350; arrives with a French force at Rhode Island, 358; proposal to refer Major André's case to, 377; present at Major André's execution, 382; the French force under, ordered against Arnold, is forced to return to Rhode Island, II. 178; forms a junction with Washington in Virginia, 195; Cornwallis censured for not acting before arrival of, 197; joins Washington at White Plains, 203; dines at house of Mr. Van Cortlandt, 204; with several other generals, dines at Newark, 206; signs articles for surrenders of Lord Cornwallis's army, 231; applied to, to save Captain Asgill, 232.  
 Washington forms a junction with, 348.  
 Rockingham, Marquis of, letter brought to Congress from, I. 88; peace the bantling of, II. 262.  
 Rodgers, Rev. Dr., writes for the American Whig, I. 21; sends Alexander McDougall a present in prison, 28; calls on the Eastern delegates in New York, 46; project to bring back to New York, II. 2; particulars respecting, 3; sent to gain over the Regulators to Congress, 8; how he succeeded in his mission, 9; notice of, 395.  
 Rodman, Joseph, case of oppression towards the family of, II. 37.  
 Roney, Lieutenant, killed, II. 378.  
 Roubalet, —, a pimp of Commissary Loring, put illegally in possession of Captain de Lancey's house in New York, II. 86.  
 Rumbo, a New York drink, what it was, I. 64.  
 Rutgers, Captain Anthony, conveys Mrs. Jones to Long Island, notwithstanding Washington's order, I. 105.  
 Rutherford, John, Member of the Council, I. 12.

## S.

- "SAFE-GUARD Captains," account of the, I. 289.  
 Sag Harbor, a party of De Lancey's Provincials taken prisoners at, I. 180.  
 St. Augustine, Loyalists remove to, II. 235.  
 St. Johns, fort at, dismantled, I. 47.  
 St. Leger, Colonel, lays siege to Fort Stanwix, I. 214; summons the garrison to surrender, 217; raises the siege and returns to Canada, 218; why, 700-703.  
 St. Lucia, Island of, reduced, I. 289.  
 St. Simon, M. de, Lord Cornwallis censured for not preventing the landing of the troops under, II. 197; signs articles of surrender of Lord Cornwallis's army, 231.  
 Salaries of officials in New York during the war, II. 162, 163; of the officers of customs there before the war, 165.  
 Salmon, Captain, commander of the Shrewsbury transport, carries off part of the plunder from Boston, I. 54.  
 Saltonstall, Gurdon, Governor of Connecticut, I. 297.  
 Saltonstall, Sir Richard, account of his descendants, I. 297.  
 Saltonstall, Roswell, very curious particulars respecting, I. 297.  
 Saltonstall, Commodore, commands the fleet sent to relieve Penobscot, I. 297; his conduct censured, 298.  
 Saratoga, General Burgoyne arrives at, I. 207; and surrenders at, 208; terms of the Convention of, 210; Convention of, violated by Congress, 698.  
 Savannah, Americans defeated at, I. 289; British take possession of, 290; evacuated by the British, II. 234.  
 Schuyler, Colonel of New Jersey, British foraging party concentrate near residence of, I. 197.  
 Schuyler, John, grandfather of Philip, notice of, II. 315.  
 Schuyler, John, father of General Philip, marries Cornelia Van Cortlandt, II. 315.  
 Schuyler, Mrs., Colonel Bradstreet makes her a present of a beautiful mansion, II. 317.  
 Schuyler, Peter, a friend of the Indians, death of, II. 362.  
 Schuyler, Philip (General), elected to the Assembly, I. 19; delegate to 2d Continental Congress, 39; arrives in New York on his way to take command of the Northern army, 55; Commander-in-chief of the expedition against Canada, 58; calls on Governor Tryon, ibid.; ordered to arrest Sir John Johnson and disarm inhabitants of Johnstown, 71; marches to Johnstown, 72; "Schuyler's Peacock Expedition," origin of the name, 74; at Fort Edward,

- 203; strength of the force under, *ibid.*; General Montgomery commands the army against Canada in the absence of, 310; origin and conduct of his expedition to Johnstown, 578; discharges Sir John Johnson from his parole, 585, 587; relative strength of his army and Burgoyne's in the campaign of 1777, 674; his and Washington's appeals for troops of no effect till after the battle of Bennington, *ibid.*; force of his army when Gates took command, 675; biographical sketches of, II. 315, 578.
- Schuyler, Philip, eldest son of John, killed, II. 315.
- Scott, Captain, one of the esquires at the Mischianza, I. 246.
- Scott, John Morin, called to the bar, I. 3; particulars respecting, 4; member of the "Whig Club," 5; further particulars of, 5; framer of the Act of Attainder, 6; death of, 6; counsel in suit against Trinity Church for recovery of land in New York, 9; one of the leaders of the Republican faction, 13; signs letter accompanying a pretended petition against charter to King's College, 15; adviser of the Republican party in the Assembly, 17; lays a pamphlet before the Grand Jury, 29; counsel for Alexander McDougal, 30; calls on Eastern delegates, 46; applies for Act of Outlawry against Ethan Allen and others, 49; member of the Republican Club, 62; and others destroy edition of answer to "Common Sense," 64; member of board for trying Loyalists, 109; advises Andrew Elliot to surrender keys of the Custom House, 167; one of the leaders of the Republican Cabal, 221; instigates abuse of Lieutenant-Governor Colden, 224; intrigues against Lieutenant-Governor Colden, 225; and against Chief Justice Pratt, 228; principal adviser of the Republican faction, 229; endeavors to have William Smith, Senr., appointed ad Judge of Supreme Court, 231; proprietor of lands in Vermont, II. 212; introduces Bill of Attainder in the legislature, 225; aids Sir James Jay in getting it passed, 524-540.
- Seabury, Rev. Dr., taken prisoner, I. 66; carried to New Haven, 67.
- Seaford, Lady, who joined the Pretender with her clan, was never attainted, II. 274.
- Seaman, Benjamin, of New York Assembly, votes against approving proceedings of the Continental Congress, I. 37; signs petition for revival of civil law, II. 117; Assistant-Superintendent of Police, salary of, 162; his salary as treasurer, 164; attainted, 269; why attainted, 281; his case considered, 288.
- Seaman, Zebulon, member of the First Provincial Convention, II. 305; not included in the Act of Attainder, 306.
- Sears, Isaac, endeavors improperly to have a jury summoned favorable to Alexander McDougal, I. 28; accompanies Alexander McDougal from the prison to the Court-house, 30; heads a party in favor of electing delegates to Continental Congress, 38; heads movement in New York on receipt of news of battle of Lexington, 39; supplies General Gage in Boston with provisions, 58; member of the Republican Club, 62; and others destroy the edition of the answer to "Common Sense," 64; brings men from New Haven to destroy Rivington's printing establishment, 66; and others obtain the keys of the Custom House, 166; denies having supplied General Gage's army with provisions, 557; his quarrel with Rivington, the printer, 561; his low character, sketch of, II. 340.
- Seaton, Mr., plundered, I. 269; released from the Tower, II. 222.
- Seaton, William, assistant in warehouse, salary of, II. 163.
- Seceders in New York, I. 2.
- Sharpe, Richard, not included in Act of Attainder, II. 306.
- Sheilburne, Lord, writes to Congress, I. 88; Loyalists sacrificed by the peace of, 111; patches up a peace, 268; gives away the thirteen colonies, II. 124; made no provision for the Loyalists, 125; leader of the new administration, 221; peace the bantling of, 262; takes no notice of Judge Jones's "case," 294.
- Sherbrook, Miles, attainted, II. 269, 285; case of, 271, 276; victim of revenge, 291; his case similar to that of Judge Jones, 305.
- Shippen, Miss, one of the ladies of honor at the Mischianza, I. 245.
- Shippen, Miss S., one of the ladies of honor at the Mischianza, I. 246.
- Shippen, Miss T., one of the ladies of honor at the Mischianza, I. 247.
- Shireff, William, quartermaster-general of the British forces, carries away immense plunder from Boston, I. 54.
- Shirley, General William, commands a royal regiment, I. 179; Lord Stirling secretary of, 321; aid of, and agent to supply provisions to, 580.
- Shoals, Captain, carried prisoner to Philadelphia, I. 68.
- Shoals, John, cheated out of money loaned to the city, II. 59.
- Silliman, Benjamin D., conversation of Aaron Burr with, I. 608.
- Silliman, General, taken prisoner and sent to Flushing, L. I., I. 123; his explanation of the escape of the American army at White Plains, *ibid.*; in the fight at Danbury, 178; his account

- of the retreat of the Americans from New York, and his own escape in letter to his wife, I. 606; Colonel Aaron Burr's presence of mind saves him and his brigade, 609; Judge Jones exchanged for, II. 278; the proposal to exchange Judge Jones for, 301; they are exchanged, 303; full particulars of capture and exchange of, 564-572.
- Simcoe, Colonel, defeats the Americans near Williamsburgh, II. 193.
- Sinclair, General, retreats with his force before Burgoyne, I. 199.
- "Sir Isaac Foot," Rev. Mr. Laidly writes under the signature of, I. 23.
- Skene, Andrew P., attainted, II. 269, 285.
- Skene, Colonel Philip, advises Burgoyne to proceed via Skenesborough, instead of Lake George, to benefit his own estate, I. 202; full sketch of, 692; attainted, II. 269, 285.
- Skenesborough, Burgoyne sets out from, I. 200; difficulties of that route, 201; why he was induced to take it, 202.
- Skinner, General, Attorney-General of New Jersey, I. 87.
- Skinner, Colonel William, marries a daughter of Sir Peter Warren, I. 158; pays debt due by Donald Campbell, II. 355.
- Skinner, Lieutenant, arrests Judge Jones, II. 297.
- Skinner, Rev. William, father of Colonel Skinner, II. 355.
- Sloper, Lieutenant, one of the knights at the Mischianza, I. 245.
- Smith, Doctor, writes for American Whig, history and particulars of, I. 20.
- Smith, John, brother of William Smith, accompanies Alexander McDougal from prison to the Court, I. 30; heads a party in favor of electing delegates to Continental Congress, 38; heads party that seizes sloop loaded with provisions for Boston, 39; signs the Association, 44; receives General Washington, etc., on landing in New York, 55; engaged in a design to seize and illtreat Dr. Cooper, of King's College, 62; member of the Republican Club, 62; and others, destroy edition of answer to "Common Sense," 64; present at destruction of Rivington's printing-office, 66; heads an anti-Loyalist mob, 101; and others, obtain the keys of the Custom House, 166; serves as a volunteer in Hurd's expedition against Queen's County, 670.
- Smith, John, of Long Island, I. 292; arrested and placed under bonds, 293.
- Smith, Joshua Hett, accompanies Alexander McDougal from prison to court, I. 30; heads a party in favor of electing delegates to Continental Congress, 38; participates in the seizure of sloop loaded with provisions for Boston, 39; signs the Association, 44; calls on Eastern delegates at New York, 46; receives General Washington, etc., on landing in New York, 55; member of the Republican Club, 62; gives up his house in New York to General Gates, and retires to Haverstraw, 85; retires to Manor of Livingston, 141; instigates abuse of Lieutenant-Governor Colden, 224; and of Chief Justice Pratt, 228; endeavors to have William Smith, Sen., appointed second judge, 231; persecution of, II. 158; proprietor of land in Vermont, 212.
- Smith, Thomas, of Long Island, magistrate of Queens County, carried prisoner to Philadelphia, I. 68; released, 69.
- Smith, Thomas, of Oyster Bay, his house repeatedly plundered, I. 268.
- Smith, Thomas, of 1716, one of the founders of the Presbyterian Church in New York, II. 390.
- Smith, William, Sen., a leading Presbyterian, I. 2; origin and antecedents of, 3; member of the Whig Club, 5;

- attorney in the suit against Trinity Church for recovery of land in New York, 9; appointed third judge of Supreme Court, 230; efforts to have him made second judge, 231; death of, ibid.
- Smith, William, Jun., called to the bar, I. 3; counsel in suit against Trinity Church for recovery of land in New York, 9; one of the leaders of the Republican faction, 13; signs letter accompanying a pretended petition against charter to King's College, 15; outside adviser of the Republican members of Assembly, 17; member of the Council, 19; his brothers contribute to the "American Whig" and "Watchman," 20; called "Patriotic Billy," 30; declines to assist in the prosecution of Alexander McDougal, 32; approves resolution adopted by Continental Congress, 36; his characteristics, 41, note; opposes measures to preserve the peace of the city on arrival of news of the battle of Lexington, 41; brothers sign the association, 44; excused from signing the association, 45; calls on Eastern delegates, at New York, 46; his brothers and brother-in-law receive General Washington on landing in New York, 55; General Schuyler lodges at house of, 58; artful, hypocritical and cunning, 59; reports plans of the government to the republican leaders, 62; his brothers aid in breaking open Loudon's printing office and destroying edition of answer to "Common Sense," 64; his brothers are present at destruction of Rivington's printing office, 66; his brothers serve as volunteers in Hurd's expedition against Queens County, 70; are thanked by Congress, *ibid.*; gives up his house to General Washington, and retires to Haverstraw, 85; removes from Haverstraw to the Manor of Livingston, 141; warmly attached to the American cause, and assists in drafting a Constitution for State of New York, 142; arranges to be arrested as a British spy, 144; confined to the Manor of Livingston, 145; sent to New York, 146; anecdotes illustrative of his duplicity of character, 147, 148, 149; made Governor George Clinton a rebel, 148; Rev. Mr. Kettleetas' opinion of, 149; his estate saved from the effects of the Double Tax Act, 150; excepted from the Act of Attainder, 151, 152; appointed Chief Justice of New York, 153; returns to New York, and hires a house in the Bowery Lane, 159; ingratiate himself with the Royal Commissioners, 160; gets appointed Chief Justice, 161; one of the commissioners for restoring peace, 167; his character in 1783, 168; one of the principal leaders of the Republican Cabal, 221; endeavors to have his father appointed ad Judge of Supreme Court, 231; as a Loyalist, goes to New York, 234; appointed Chief Justice, 235; British General Clinton governed by, 315; confidential adviser of Sir Henry Clinton, 368; causes the loss of America by Sir Henry Clinton, 369; his brother conducts Major André to Tarrytown, 372; sent to Washington to intercede for André's life, 376; not allowed to land, 377; brother of Joshua Heit Smith, appointed Chief Justice of Canada, 384; his wife a descendant of Anneke Jans, 413; particulars respecting, 642; his tricky method of leaving Livingston manor, 644; official papers about it, 645, 646; not attainted, and his estate enjoyed by his heirs till 1854, 647; plans the restoration of Brick Presbyterian Church and the return of Rev. Dr. Rodgers, in the middle of the war, II. 2; present when Dr. Rodgers offered up prayers for Montgomery's success, 4; Member of the Council, 113; succeeds Chief Justice Horsmanden, and is appointed Chief Justice of Quebec, 114; Gen. Carleton's adviser, hated Loyalists, 126; chief adviser of Sir Henry Clinton, censured, 206, 207; planned the burning of New London, 208; character of, 209; of opinion that Sir H. Clinton could not act on the treaty of Vermont to return to its allegiance, 210; secretly sends Governor Clinton a copy of his opinion given to Sir H. Clinton, which the Governor lays before the legislature of New York, 211; motives of his course as to Vermont, 212; principal adviser of General Schuyler in his political course, 317; George Clinton studied law under, 326; action of New York Legislature on the Vermont treaty, etc., sent by, 471-473.
- Smith, William Pearnree, member of the "Whig Club," I. 6.
- Smith, William (Suffolk County), the wood on his estate ordered cut down, II. 26; order not executed, 27.
- Smith family, wholly distrusted by the Loyalists, II. 209.
- Smith, the elder and younger, charged with instigating the abuse of Lieutenant-Governor Colden, I. 224; and of Chief Justice Pratt, 228; principal advisers of the Republican faction, 229.
- Smyth, J. F. D., Captain in Simcoe's Legion, his statement respecting the ill-treatment of the inhabitants of Long Island, I. 295.
- Smyth, John, Treasurer of City Funds, II. 164, 458.
- Society Library. (See *Library, Subscription.*)
- "Sons of Liberty" threaten the life of

- the printer who informed against McDougal, I. 32.  
 Southampton, Baron, marries a daughter of Sir Peter Warren, I. 158; son of Lord Augustus Fitzroy, II. 355.  
 Southampton, Sir H. Clinton reviews the troops at, II. 90.  
 South Carolina, the British lose, II. 189.  
 Specie. (See *Hard money*.)  
 Springfield, N. J., houses burned in, II. 307.  
 Staker, Nicholas, Mrs. Cruger sheltered at the inn of, I. 186.  
 Stamp Act, enacted and repealed, I. 18.  
 Stapleton, Ensign, 17th Light Dragoons, II. 96.  
 Starke, Colonel, defeats the British at Bennington, I. 205.  
 Staten Island, Washington cuts off all communication between Long Island and, I. 106; British Army lands at, 103, 105, 110; names and salaries of officers of Court of Police on, 162; churches converted into barracks in, 337; Court of Police established on, II. 2.  
 Stillwater, American Army concentrates at, I. 201.  
 Stirling, Lord, rudely issues a conditional pass to Mrs. Jones, I. 104; member of the board for trying Loyalists, 109; taken prisoner, 112; member of Board of Officers, Judge Jones carried before, II. 297; biographical sketch of, 320; historical sketch of his origin, career, and claim to the earldom of Stirling, 579-587.  
 Stoney Point, fort erected by the British at, I. 311; garrison surprised and made prisoners, 312; fort at, demolished, 313; reoccupied by the British, 314; again demolished and rebuilt, 315.  
 Stockton, Major, of Skinner's Brigade, murders a man for asking payment of a debt, and goes unpunished, II. 92.  
 Stonington, burned, II. 307.  
 Strachey, Henry, notice of, II. 487.  
 Sullivan, General, taken prisoner, I. 112; sent to Philadelphia with proposals from the British, 256; lays siege to Newport, R. I., 275; raises the siege and makes a successful retreat, 277; biographical sketch of, II. 332; Colonel Butler's striking opinion of his Indian expedition to Western New York, 334; his method of conducting it, and its success, 613-617.  
 Sullivan's Island (S. C.), British defeated in the attack on, I. 99.  
 Sumter, General, defeated by Colonel Tarleton, I. 387, 388.  
 Superintendent of Exports, office of, created, II. 13.  
 Supreme Court, history of, from 1760 to the Revolution, I. 221-235; state of, at the opening of the Revolution, 234; notice of the, 711; why it was not opened during the rebellion, II. 119; in session during Washington's occupation of New York, 135. (See *Judges*.)  
 Sunstroke, fifty British grenadiers found dead under a tree on Sir H. Clinton's march across New Jersey, I. 264, note.  
 Symonds, Captain, signs articles of surrender of Cornwallis's Army, II. 231.

## T.

- TALBOT, Lieutenant, esquire at the Mischianza, I. 245.  
 Tallmadge, Major, André delivered to, I. 373, 731; shows in Congress the dishonest character of captors of André, 733, 734; he is corroborated by Captain Bowman, 735; and General King, 736; sent against a refugee fort in Suffolk County, II. 33; takes the garrison prisoners and destroys a quantity of forage at Coram, 34.  
 Tappan, "Mrs. Washington's Own Regiment" surprised and massacred at, I. 286.  
 Tappan, Miss, marries George Clinton, II. 326.  
 Tappan, Christopher, brother-in-law of Governor Clinton, II. 326; ordered by Provincial Convention to "devise means" to escort Lady Johnson to a safe place of confinement, does so, and reports to the Convention, I. 591.  
 Tarleton, Colonel, one of the knights at the Mischianza, I. 247; defeats Americans at Wrexham, 353; defeats General Sumter, 387, 388; defeated with a heavy loss, II. 185; McKenzie's strictures on his History of the War in the South, quoted, 213.  
 Taverns, City Arms kept by one Hull, I. 173.  
 Temple, Mr. Robert, brother of Sir John, arrives at Sandy Hook, I. 85; is brought before Governor Tryon and searched, deceives Tryon, 87; lands in New York, and leaves with letters for Congress, 88.  
 Temple, Sir John, friendly to the American cause, I. 85; further particulars respecting, 86, 87; writes to Congress, 88.  
 Ten Broeck, Abraham, elected member of the Colonial Assembly for Albany, I. 17; moves the approval of the proceedings of the Congress of 1774, 510.  
 Thanksgiving, annual, difference between an annual fast and an, II. 334.  
 Thomas, John, Judge of Common Pleas in Westchester County, applies for Court of Oyer and Terminer, II. 282.

- Thompson, General, taken prisoner in Canada, I. 89.
- Thorne, Captain, one of the esquires at the Mischianza, I. 247.
- Thrill, William, warehouse keeper, II. 163.
- Throgg's Neck, why the British landed at, I. 222, 620.
- Thurman, John, his bad treatment, case of, II. 63.
- Thurman, Ralph, his indignant response to the threats of Isaac Sears and others, I. 558.
- Ticonderoga, seized and garrison taken prisoners, I. 47; abandoned by the Americans, 50; artillery captured at, serve at siege of Boston, 50; Americans retire from, 199.
- Tiger Privateer, Alexander McDougal commander of the, I. 25.
- Toasts drank at the Whig Club, I. 6.
- Tolnica, Norman, commands a company of Highlanders in New York, I. 323.
- Tories, Loyalists so called, I. 101; ridden on rails in New York City, 102, 506.
- Tournament at the Mischianza, description of the, I. 244.
- Townsend, George, Chairman of the Queens County Convention, II. 305; not included in the Act of Attainder, 306.
- Townsend, James, obliged to pay damages for arrest of two counterfeiters, II. 31; member of the first Provincial Convention, 305; pardoned by Sir Wm. Howe, and not included in the Act of Attainder, 306.
- Townsend, John, his premises plundered by the Americans, I. 268.
- Townsend, Micajah, imprisoned for complaining of being robbed, I. 368.
- Townsend, Richard, robbed by the Americans and carried prisoner to New England, I. 268.
- Townsend, Samuel, damages in favor of counterfeiters levied on, II. 31; member of the first Provincial Convention, 305; not included in the Act of Attainder, 306.
- Treat, Rev. Mr., writes for "American Whig," I. 21; sends Alexander McDougal a present while in prison, 28; calls on the Eastern delegates, 46.
- Treat, Rev. Joseph, Presbyterian minister, New York, II. 305.
- Treaty of Continental Congress with Indians, I. 573.
- Treaty of peace, abstract of provisions of, II. 238; how fifth article of was nullified by the Americans, 246; why clause respecting negroes was not complied with, 257; when received at New York, 259; its negotiators on each side, their characters, singular facts of its negotiation, and the signing of it, 487, 497, 500; full text and ratifications of, 661.
- Tredwell, Dr., a Loyalist of Queens Co., robbed of his horse by Lieut.-Colonel Birch, of 17th Dragoons, I. 114.
- Tredwell, Thomas, member of committee to examine disaffected persons, II. 296.
- Trenton, Washington defeats and captures the Hessian force at, I. 169.
- Trespass Act, provisions of, II. 149.
- Trial against Trinity Church for recovery of land in New York, I. 9.
- Trinity Church, I. 7; lawsuit against it in 1760, 8; vestry of, and (civil) vestry of the city, distinct bodies, 395; how each was chosen, 396; names of the first members of each, 396; its first rector, 398; origin and founders of, 400; its title to its lands, 402-413; charter continued in existence during the occupation of New York by the British, II. 53; the church shut up by the Americans previous to that occupation, 54. (See *Church, Episcopal*.)
- Triumvirate, names of, I. 3.
- Trois Rivieres, Americans defeated near, I. 89.
- Trumbull, Governor, sundry Loyalists intrusted to the care of, II. 271; notifies prisoners on parole that they must return, 292; letters recalling them suppressed, and the fact known to, 293; such prisoners responsible only to, 294; permits Judge Jones to return to Long Island, 299; proposes an exchange of Judge Jones for General Silliman, 301.
- Tryon County not represented in Second Continental Congress, I. 38.
- Tryon, General, his troops plunder Yale College, I. 137; attainted, 150; marches on Danbury, 177; destroys the stores there and returns to New York, 178; burns the Continental village, 219; commands an expedition to east end of Long Island, 287; Roswell Saltonstall visits, 297; lays waste several towns in Connecticut, 314; his character defended, 315; commissions officers of militia enrolled for defence of New York, 322.
- Tryon, Governor, returns from England to New York, I. 55; his reception, 56; refuses to see General Schuyler as a general, 58; informed of a design to seize and remove him to Connecticut, 61; goes on board ship, 62; is asked by James Duane to appoint him a member of the Council, 79; Mr. Temple brought before and searched, 87; sends companies of provincials to join General Howe, 110; General Robertson propagates falsehoods in England against, 161; superseded, 165; his character, *ibid.*; appoints Thomas Jones second judge of Supreme Court, 232; intrigues against, 234; General Robertson succeeds, *ibid.*; endeavors in vain to procure payment for Colonel

Floyd's horses, etc., taken for use of government, 331; report on affairs of New York, 503; order of New York Provincial Congress for reception of, 556; Governor of North Carolina, II. 5; defeats the Regulators, 6; appoints Robert Bayard judge of Court of Admiralty, 104; dissolves House of As-

sembly, 113; issues a commission for a Court of Oyer and Terminer for Westchester County, 114; declines being commandant of New York, 166; absurdity of including his name in Act of Attainder, 270; why attainted, 284; address of inhabitants of New York to, 453.

## U.

**ULSTER COUNTY**, George Clinton delegate to Continental Congress from, I. 39.  
Underhill, Nathaniel, mayor of Westchester borough, taken prisoner, I. 66; removed to Connecticut, 67.

Underwood, Lieutenant, one of the knights at the Mischianza, I. 246.  
Uniform of the Continental troops, blue and buff, I. 58.

## V.

**VALLEY FORGE**, Washington winters at, I. 190; distressing condition of the American Army at, *ibid.*  
Van Cortlandt, Augustus, concealed by Farmer Lefferts from the American troops, I. 109.  
Van Cortland, Frederick, member of New York Committee, II. 305; not included in Act of Attainder, 306.  
Van Cortland, James, member of the New York Committee, II. 305; not included in Act of Attainder, 306.  
Van Cortlandt, John, accompanies Alexander McDougal from the prison to the Court House, I. 30; calls on Eastern delegates, 46; member of the Republican Club, 62.  
Van Cortlandt, Mr., Generals Washington and Rochambeau dine at house of, at Kingsbridge, II. 204.  
Vanderspiegle, John, one of the persons who instigated abuse of Lieutenant-Governor Colden, I. 224.  
Vanderbilt, John, II. 305; not included in Act of Attainder, 306.  
Van Horne, David, a leading Presbyterian, I. 2; member of the Whig Club, 6; signs the association, 44; calls on Eastern delegates at New York, 46.  
Van Kleek, Leonard, elected member of Assembly for Dutchess County, I. 18; of New York Assembly, votes against approving proceedings of Continental Congress, 37; omitted from Act of Attainder, II. 281.  
Van Loo, ——, joins the rebel army, II. 46.  
Van Schaack, Peter, one of the framers of the Association, I. 42; notice of, II. 306, 573.  
Van Rensselaer, John, father-in-law of General Philip Schuyler, I. 58; General Philip Schuyler marries a daughter

of, II. 318; had two sons in the American Army, 319.  
Van Zandt, Peter, heads an anti-Loyalist mob in New York, I. 101.  
Vaudreuil, Marquis de, surrenders Canada, II. 370.  
Vaughan, General, arrives with a British force in America, I. 98; urges General Howe to pursue the American Army after the defeat at Brooklyn, 112; marches against Fort Lee, 124; pursues the Americans, 125; in command at Amboy, 176; ascends the Hudson River with a military force, and burns Esopus, etc., 219; recommends one Hicks as a tenant to Captain John Peter de Lancey, II. 85; charge against Colonel Floyd referred to, 95; partiality shown to, 271.  
Vermont, history of early settlement of, I. 48, 49; claims to be an independent State, 51; treaty of the inhabitants to return to their allegiance to the King forwarded to Sir H. Clinton, II. 210; William Smith opposed to, 211; the Smiths grantees of lands in, 212; William Smith sends to Governor George Clinton of New York, treasonable treaty of, and copy of his opinion thereon, 471; action of Governor Clinton and Legislature of New York, on treaty of, 472, 473.

Vernon, Admiral, General Washington's brother died on board fleet of, II. 344.  
Verplanck, Samuel, a lunatic, General Birch occupies house of, II. 67; his family has to be supported by friends, 68.  
Verplanck's Point, British capture a fort at, I. 310; abandoned and reoccupied by the Americans, 314.  
Vesey, Rev. William, first Rector of Trinity Church, notice of, I. 398.

Vestry, civil and ecclesiastical, difference between, I. 395.  
 Villiers, M. de, Washington taken prisoner by, II. 346.  
 Virginia, French fleet arrives off the coast of, I. 273; British force sent to, 295; damage done in, 296; General Arnold's marauding expedition into, II. 177; he returns to New York with his plunder, 179; operations in, 189; expeditions to, 462.

## W.

WALCOT, Colonel, commands the Connecticut regiment at Cape Breton, I. 178.  
 Waddell, William, his salary as Superintendent of a Court of Police, II. 163.  
 Wages of street pavers in New York during the war, II. 127.  
 Walker, Sir Hovenden, failure of his expedition against Canada, II. 337.  
 Wallace, Alexander, attainted, II. 269, 285; case of, 271, 276; victim of revenge, 291; his case similar to that of Judge Jones, 305.  
 Wallace, Hugh, Governor Tryon a guest of, I. 56; attainted, 151, II. 269, 285; case of, 271, 276; victim of malice and revenge, 290; his case similar to that of Judge Jones, 305.  
 Wallace, Sir James, convoys British force up the Hudson, I. 218; ascends that river near to Albany, 219; destroys the American ships in the Hudson River, II. 361.  
 Walton, Abraham, II. 305; not included in Act of Attainder, 306.  
 Walton, Jacob, Member of Assembly for New York, I. 18; of New York Assembly, votes against approving proceedings of Continental Congress, 37; concealed from the American troops, 108; omitted from the Act of Attainder, II. 281.  
 Walton, Wm., Member of the Council, death of, I. 25; Colonel of one of the companies of Governor's Guards, 55; Superintendent of Court of Police, his salary, II. 163, 305; not included in Act of Attainder, 306.  
 War between Great Britain and France greatly affected the American Colonies, I. 17.  
 War, cost of the, I. 365.  
 Warner, Seth, and others, capture Fort Ticonderoga, I. 47; outlawed, 49; Congress thanks, 50; insists on the independence of Vermont, 51.  
 Warren, Doctor, killed at Bunker's Hill, I. 52.  
 Warren, Sir Peter, marries Susannah de Lancey, I. 157; Colonel Skinner marries a daughter of, II. 355; Sir William Johnson a relative of, 362.  
 Washington, General, besieges Boston, I. 50; arrives in New York on his way to Boston, 55; New York Convention presents an address to, 57; proceeds to Boston, 58; enters New York with his army, 83; occupies house of William Smith, 85; establishes his headquarters at New York, 101; refuses Mrs. Jones a pass to go home to Long Island, 104; refuses to receive a letter from General Howe unless addressed to him as "General," 106; is thanked by Congress for declining to enter into negotiations with the British, *ibid.*; sends a force to Long Island to prevent communication with the British on Staten Island, 107; strength and character of his army at New York, 110; moves to Long Island, 111; crosses the Hudson to New Jersey, 125; retreats through New Jersey, *ibid.*; crosses the Delaware, 126; desperate condition of his army, *ibid.*; defeated at Brandywine, 189, 191; uncertain as to object of Howe's movement, 190; drives the enemy from Germantown, 194; is afterwards defeated there, 195; winters at Valley Forge, his report on the condition of his army, 196; at Valley Forge, destitute condition of the army under, 237; the authorities of Philadelphia recommended to apply for grace to, 239; at the Battle of Long Island, 256; strength of his army in 1776, 259; harasses the British on their march across New Jersey, 263; a regiment of light-horse, called "Mrs. Washington's Own," barbarously massacred, 286; plans an attack on the British at Rhode Island, 316; attempt to seize the person of, 318; undisturbed at White Plains, 350; makes excursions through Westchester County, 366; Clinton censured for not having attacked, 368; visits New England, 370; informed of Arnold's treason, 373; Colonel Robinson and General Arnold intercede for André with, 376; orders André to be hanged, 377; André's request to, 381; not present at his execution, 382; despises Clinton's threats of retaliation, 383; official order of New York Provincial Congress for reception of him and Governor Tryon, 555; the size, before the battle of Brooklyn, of the respective armies of Howe and of, 599-603; N. Y. courts of justice not shut up by, II. 135; despatches a force against Arnold in Virginia, 178; mutiny in the army of, 179; force of, greatly reduced, 180; General

- Clinton neglects to demolish army of, 180; could not capture New York, 185; forms a junction with the army under Rochambeau, 195; returns to the Highlands, 196; his letter to Count de Grasse, 199; encamps at White Plains, 202; Sir Henry Clinton neglects to prevent the junction of, with Rochambeau, 203; dines at Mr. Van Cortlandt's, 204; with several other generals dines unmolested at Newark, 206; regularly receives, for two years, the British Army returns, 210; demands the surrender of the executioner of Lieutenant Huddy, 228; Sir Guy Carleton endeavors to mollify, 229; Lord Cornwallis surrenders to, 231; orders lots to be cast among the British captains to determine which should be executed for the murder of Lieutenant Huddy, 232; sundry Loyalists transported to Connecticut by order of, 271; prisoners taken up by order of, responsible only to, 294; orders Judge Jones, and others, to be removed to Connecticut, 297; biographical sketch of, 344; denies, in 1786, treating Asgill harshly and publishes all the papers relating to the subject, 485; his conduct in the de Jumonville affair, 623; capitulates at Fort Necessity, 626.
- Watchman, the, published in Philadelphia and republished in New York, I. 19; names of contributors to, 20, 21; attack on the de Lancey family by, 23, 425.
- Watch Tower, the, published, I. 6; influence of, 7; account of, 416.
- Watson, Captain, chief of one section of the Knights of the Mischianza, I. 246.
- Watson, Commissary, a favorite of Sir Guy Carleton, II. 266.
- Watts, Anne (de Lancey), descendants of, I. 663.
- Watts, John, father of Lady Johnson, I. 78; attainted, 150; his estate confiscated, 152; married Ann de Lancey, 158; attainted, II. 269; in England over a year before the Declaration of Independence, 270; why attainted, 271, 283; marries a sister of Governor de Lancey, 324.
- Watts, John, Jr., Recorder of New York, offices subsequently held by, II. 420.
- Watts, Robert, sharp correspondence of with General Schuyler about his sister, Lady Johnson, I. 589; Lord Stirling disinherits his daughter Mary for having married, II. 324.
- Wayne, General, defeated, I. 192; storms and takes Stoney Point, 313; present at Major André's execution, 382.
- Webb, General, Sir William Johnson joins, II. 367.
- Weir, Commissary, house and country seat of, II. 67.
- Westchester borough, John de Lancey represents it in the Assembly, I. 18; Isaac Wilkins, Member of Assembly for, 37.
- Westchester County, Frederick Philipse, Member of Assembly for, I. 37; Lewis Morris delegate to Continental Congress from, 38; the British overrun and plunder inhabitants of, 312.
- West Point, negotiations with General Arnold for the surrender of, I. 370.
- Wetherhead, John, attainted, II. 269; mentioned, 285.
- Whiteford, Caleb, Secretary to British commissioner to conclude a treaty of peace with America, II. 237; notice of, II. 488.
- Witherspoon, Rev. John, D.D., a Jacobite, II. 392.
- Whig. (See *American Whig*.)
- Whig Club formed in New York, I. 5; designs and publications of, 6.
- "Whig Interest," the Presbyterian party dubbed with the name of the, I. 18.
- White, Henry, attainted, I. 151; II. 269.
- White, Miss, one of the ladies of honor at the Mischianza, I. 245.
- White, Thomas, attainted, II. 269, 285.
- Whitehall. (See *Skeneborough*.)
- White Plains, New York Provincial Convention retires to, I. 110; burnt by the Americans, 122; why the American army escaped at, 123; Americans abandon, 124; battle of, 621; infamous burning of, by the Americans, 624-626; Rochambeau joins Washington at, II. 203; every house in, burned, 308.
- Wickham, Parker, signs petition for revival of civil law, II. 117; attainted, 269, 287; his case considered, 288.
- Wiesner, Henry, delegate to 2d Continental Congress, I. 39.
- Wilkes, —, Alex. McDougal compared to, I. 27.
- Wilkins Isaac, of New York Assembly, votes against approving proceedings of Continental Congress, I. 37; omitted from the Act of Attainer, II. 281.
- Willett, Judge John, carried prisoner to Philadelphia, I. 68; released, 69.
- Willett, John, timber on lot mortgaged to him cut down, II. 46.
- Willets, Richard, Sir Henry Clinton stops at house of, II. 91.
- Williams, Colonel, killed, II. 366.
- Williams, Major, taken prisoner, I. 207.
- Williams, Micah, arbitrary treatment of, II. 84.
- Winter of 1779, severity of the, I. 320, 321.
- Winyard, Lieutenant, one of the Knights at the Mischianza, I. 246.
- Wolfe, General, burns a number of villages near Quebec, II. 311.
- Wood, price of, in winter of 1779-1780 in New York, I. 341.
- Woodhull, General Nathaniel, elected to the Assembly, I. 19; taken prisoner,

- 112; sketch of, his capture and death, II. 331; documents relating thereto, and the different versions of the story, 593.  
Wooley, Captain, robbed and imprisoned, I. 268.  
Wooster, General, killed in the fight near Danbury, I. 178; biographical sketch of, *ibid.*
- Worthington, Colonel, represents William Smith to be an enemy to the English Government in Church and State, I. 147.  
Wright, Sir James, Governor of Georgia, extract of a letter from, II. 175.  
Wrotesly, Sir John, one of the managers of the Mischianza, I. 242.

## Y.

- YALE COLLEGE, a nest of sedition, faction, and republicanism, I. 3; utterly averse to bishops and kings, 5; plundered by the British, 137; Roswell Saltonstall and the author fellow-students at, 397.
- Young, ——, two Long Island counterfeeters, lodged in prison, escape and recover damages from the Committee of Huntington, II. 30-32.

 Under a few of the heads in this Index the regular order of the paging has been occasionally interrupted, to preserve continuity in the subject of the references, and thus save the reader's time in searching.

THE END.



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